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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 331.

LAWRENCE HART, PLAINTIFF IN ERROR,

vs.

THE PENNSYLVANIA RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED OCTOBER 13, 1883.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Missouri, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the March term, 1881, thereof, between Lawrence Hart, plaintiff, and The Pennsylvania Railroad Company, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Issued at office, in the city of St. Louis, with the seal of the circuit court of the United States for the eastern district of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.
By A. P. SELBY, *Deputy.*

Allowed by—
SAMUEL TREAT, *Judge.*

1½ *Return to Writ.*

UNITED STATES OF AMERICA, } *ss:*
Eastern District of Missouri, }

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the *the* record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said circuit court, at office, in the city of St. Louis, this 6th day of July, A. D. 1881.

[SEAL.] M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *D. C.*

Endorsed: No. —. United States circuit court, eastern district of Missouri. Lawrence Hart *vs.* Penn. R. R. Co. Writ of error to the

Supreme Court of the United States. Returned and filed — day of ——, 187–, —— ——, clerk.

2 The United States of America to The Pennsylvania Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Missouri, wherein Lawrence Hart is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, judge of the circuit court of the United States for the eastern district of Missouri, this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

SAMUEL TREAT,
Judge United States Circuit Court, Eastern District of Missouri.

2½ Endorsed: United States circuit court, east. district of Missouri. Lawrence Hart *vs.* Penn. R. R. Co. Citation. Filed ——, 187–. —— ——, clerk.

3 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

In the Circuit Court of the United States in and for said District.

Be it remembered that on the tenth day of August, A. D. 1880, there was filed in the office of the clerk of the circuit court of the United States in and for the eastern district of Missouri a certain transcript of record from the circuit court of the city of St. Louis, Missouri, in words and figures following, to wit:

STATE OF MISSOURI, } Set.:
City of St. Louis, }

Be it remembered that heretofore, to wit, on the 10th day of March, 1880, there was filed in the office of the clerk of the circuit court, city of St. Louis, a petition, which is in the words and figures following, to wit:

4 *Petition.*

In the Circuit Court, City of St. Louis. April Term, 1880.

LAWRENCE HART, Plaintiff,
vs.
THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Plaintiff states that at all the dates hereinafter named the defendant was, and now is, a corporation, created and existing by law, and

was and is a common carrier of freight and passengers for hire, in various part- of the United States, and especially from Jersey City, in the State of New Jersey, to St. Louis, in the State of Missouri.

Plaintiff states that on or about the 23d day of October, A. D. 1879, for a consideration paid to it and to be paid, the defendant undertook and agreed to transport and carry for plaintiff, from Jersey City aforesaid to St. Louis aforesaid, the following goods and chattels, to wit:

One (1) mare, three years old (bay); one (1) chestnut mare, six years old, and three horses and a lot of saddles, bridles,
5 whips, spurs, blankets, one clock, two chests, a lot of curry-combs and brushes and boxes, all of which was then and there well known by the defendant to be of great value, to wit, of the value of forty thousand dollars ($40,000).

Plaintiff states that defendant undertook and agreed, for the consideration aforementioned, to carry said horses and property from Jersey City aforesaid to St. Louis, safely, and there deliver the same to plaintiff in as good condition as when received; but plaintiff avers that defendant wholly and entirely failed to perform its contract and agreement in this behalf, and that because of its own negligence while carrying said horses and property, as aforesaid, it killed the first-mentioned of said horses, to wit, the bay mare, three years old, and injured, maimed, and wounded all the others, and destroyed and lost all the other property herein mentioned; that the value of the mare so killed was fifteen thousand dollars ($15,000);
that the injury done and the damage thereby by plaintiff
6 sustained to the other mare was fifteen hundred dollars ($1,500), and to the other horses the injury done and damage sustained by plaintiff was and is three thousand dollars, and the value of the other property lost or destroyed by defendant, as aforesaid, was three hundred dollars.

Plaintiff states that said injury to and destruction of said property was caused and occasioned by the negligence and recklessness of defendant while acting as common carrier for plaintiff as aforesaid, whereby plaintiff says he was and is damaged in the sum of twenty-five thousand dollars, and for that amount and for interest on the same from the date of said injury and damage, to wit, Oct. 23, 1879; plaintiff asks for judgment & for costs.

By G. M. STEWART, *His Attorney.*

Upon the filing of which petition a summons [was] issued, which, with the sheriff's return thereon, is in words and figures following, to wit:

Summons.

CITY OF ST. LOUIS, *ss:*

The State of Missouri to the sheriff of the city of St. Louis, Greeting:
7 We command you to summons The Pennsylvania Railroad Company to appear before the judges of our circuit court on the first day of the next term thereof, to be held in the city of St. Louis, on the first Monday of April next, then and there to answer

the complaint of Lawrence Hart, as set forth in the amended petition, and have you then and there this writ.

Witness Charles F. Vogel, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 10th day of March, in the year of our Lord eighteen hundred and eighty.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Sheriff's Return.

Executed this writ, in the city of Saint Louis, on the 11th day of March, 1880, by delivering a copy of the writ and petition, as furnished by the clerk, to Nathan Stevens, general western agent of the Pennsylvania Railroad Company, the within-named defendant, who was in its business office, and had charge thereof at time of
8 said service; the president or other chief officer could not be found in the city of Saint Louis.

JOHN FINN, *Sheriff.*
By JOHN L. CUNNINGHAM, *Deputy.*

And afterwards, on the 21st day of May, 1880, an answer was filed in said cause, which is in words and figures as follows, to wit:

Answer.

In the Circuit Court, City of St. Louis. Room 5.

LAWRENCE HART, Plaintiff,
vs.
PENNSYLVANIA RAILROAD COMPANY, Defendant. } No. 52882.

Now this day comes the defendant in the above-entitled cause, and, for answer to the petition of plaintiff herein, denies each and every material allegation of said petition, except those hereinafter expressly admitted.

Defendant admits that it is, and was at the times hereinafter mentioned, a corporation, and says that it was created and exists under and by virtue of the laws of the State of Pennsylvania; that the termini of its road are Pittsburg, in the State of Pennsylvania, on the west, and Jersey city, in the State of New Jersey, on the
9 east, but that its road does not extend west of said city of Pittsburg, and that it is not a carrier to any point west of said city.

Defendant further admits that it received the horses in plaintiff's petition mentioned, but says it did not agree to transport them to St. Louis.

Defendant says that when said horses were received by it defendant delivered to plaintiff a receipt or bill of lading which contained certain terms and conditions, which said terms and conditions were accepted by plaintiff in writing under his hand and seal; that one of said terms and conditions was that said horses were received by defendant for itself, and on behalf of connecting carriers for transportation, plaintiff agreeing to pay as freight ninety-four cents per one hundred pounds, on the condition that the carrier assumed a

liability on the stock to the extent of not exceeding two hundred dollars for each horse, or if the car was a chartered car, not to exceed twelve hundred dollars for the car load, and it was
10 agreed that the carrier's liability was in no case to exceed the sum above mentioned; that another of said conditions, which was accepted by plaintiff, was as follows, to wit: "When necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier or carriers for transportation upon such terms and conditions as the carrier may be willing to accept, provided that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate; but in no event shall one carrier be liable for the negligence of another."

And among such terms and conditions was also the following, to wit: "The owner of said animals, or some person appointed by him, shall go with and take all requisite care of said animals during their transportation and delivery, and any omission to comply herewith shall be at the owner's risk."

10 And defendant says that it received said horses at Jersey City aforesaid, and carried them safely to the city of Pittsburg aforesaid, the western terminus of its road, and there delivered them safely and in the same condition as received to the Pittsburgh, Cincinnati and St. Louis Railroad Company for further transportation; that it was guilty of no negligence in the carriage of said horses, nor did the said horses suffer any injury while in defendant's possession; and that if they suffered any injury after their delivery to the said Pittsburgh, Cincinnati and St. Louis Railroad Company, of which defendant has no knowledge nor any information sufficient to enable it to form a belief, defendant is not responsible nor liable therefor.

And having fully answered, defendant asks to go hence without day.

EVERETT W. PATTISON,
Att'y for Def't.

And afterwards, on the 26th day of May, 1880, a reply to
12 said answer was filed in said cause, which is in words and figures as follows, to wit:

Reply.

In Circuit Court, City of St. Louis.

LAWRENCE HART, Plaintiff,
v.
PENNSYLVANIA RAILROAD, Defendant.

And now comes the plaintiff, and, for reply to defendant's answer, denies each and every material affirmative averment thereof, and renews his prayer for judgment as in his petition.

G. M. STEWART,
For Plaintiff.

And on the 29th day of May, 1880, a petition for removal of said cause was filed, which is in words & figures as follows, to wit:

Petition for Removal to U. S. Circuit Court.

In the Circuit Court, City of St. Louis.

LAWRENCE HART, Plaintiff,
vs.
PENNSYLVANIA RAILROAD Co., Defendant.

Petition for the Removal to the circuit court of the United States, eastern district of Missouri.

To the honorable the circuit court, city of St. Louis, State of Missouri:

Your petitioner, Lawrence Hart, respectfully shows to this
13 honorable court that the matter and amount in dispute in the above-entitled cause exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that the petitioner was, at the time of the commencement of this suit, and still is, a citizen of the State of Louisiana, and that defendant, the Pennsylvania Railroad Co., was then, and still is, a corporation, a resident of the State of Pennsylvania, and a citizen of said State of Pennsylvania.

And your petitioner offers herewith a bond, with good and sufficient surety for his entering in said circuit of the United States on the first day of its next session, a copy of the record of this suit, and for paying all costs that may be awarded by said circuit court, if said circuit court shall hold that this suit was wrongfully or improperly removed thereto.

And he prays the honorable court to proceed no further
14 herein, except to make the order of removal required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States in and for the eastern district of Missouri, and he will ever pray.

G. M. STEWART & PAUL BAKEWELL,
Att'ys for Petitioner, Lawrence Hart.

STATE OF MISSOURI, } ss:
City of St. Louis. }

I, Paul Bakewell, being duly sworn, do say that I am one of the attorneys for the petitioner in the above-entitled cause; that I have read the foregoing petition and know the contents thereof, and that the statements and allegations therein contained are true, and I verily believe.

PAUL BAKEWELL.

Subscribed by the said Paul Bakewell, in my presence, and by him sworn to before me, this 29 day of May, A. D. 1880.

CHAS. F. VOGEL, *Clerk.*

And afterwards, at a special term of said circuit court,
15 being the April term, 1880, the following proceedings were had in said cause, to wit:

Order of Removal.

SATURDAY, *May* 29, 1880.

LAWRENCE HART
vs. } 52882.
PENNSYLVANIA RAILROAD COMPANY.

On petition of plaintiff, by attorney, this day filed, it is ordered by the court that, on the plaintiff giving bond in the sum of two hundred and fifty dollars, to be approved by the court, that the clerk of this court forthwith certify to the circuit court of the United States for the eastern district of Missouri, a full, true, and complete transcript of the record and proceedings in this cause, as fully as the same remains of record in his office. Bond approved and filed.

Which bond for removal is in words & figures following, to wit:

Bond for Removal.

Know all men by these presents, that I, Lawrence Hart, as principal, and Andrew Parle, as surety, are held and firmly bound unto the Pennsylvania Railroad Co. in the penal sum of two hundred and fifty dollars ($250), lawful money of the United States,
16 the payment whereof well and truly to be made unto the said Pennsylvania R. R. Co., we bind ourselves, our heirs, representatives, and assigns, jointly and severally, firmly by these presents, yet upon these conditions: The said Lawrence Hart having petitioned the circuit court of the city of St. Louis, State of Missouri, for the removal of a certain cause therein pending, wherein Lawrence Hart is plaintiff and the Pennsylvania R. R. Co. defendant, to the circuit court of the United States in and for the eastern district of Missouri;

Now, if the said Lawrence Hart, your petitioner shall enter in the said circuit court of the United States, on the first day of its next session, a copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise in full force and virtue.

17 Witness our hands and seals, this 28th day of May, A. D. 1880.

LAWRENCE HART. [SEAL.]
ANDREW PARLE. [SEAL.]

Approved in open court, May 29, 1880.
Attest: CHAS. F. VOGEL, *Clk.*

STATE OF MISSOURI, } *Set.:*
City of St. Louis, }

I, Chas. F. Vogel, clerk of the circuit court, city of St. Louis, cer-

tify the foregoing to be a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remains of record in my office. I further certify that the statement of costs below set forth is true and correct.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this 12th day of July, A. D. 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

And afterward, to wit, in the circuit court of the United States in and for the eastern district of Missouri, on the 6th day of
18 April, A. D. 1881, the following proceedings were had, and appear of record, to wit:

Verdict.

LAWRENCE HART, Plaintiff,
vs. } 1695.
PENNSYLVANIA RAILROAD COMPANY, Defendant.

Now come the parties by their attorneys—the plaintiff by Messrs. Stewart and Bakewell, and the defendant by Messrs. Pattison and Crane—and this case being regularly called for trial, and both parties being ready, it is ordered that a jury come.

And thereupon come said jury, to wit, George W. Porter, Huntington Smith, Henry W. Hough, Alexander H. Smith, J. B. S. Lindsay, John Greaves, Benjamin B. Graham, T. K. Humphrey, A. H. White, Jefferson Clark, John Jamison, and Marshal Glascock, twelve good and lawful men, duly empanel-d and sworn to well and truly try the issues joined herein, who, after hearing the evidence and arguments of counsel, and receiving the charge of the court, return the following verdict, to wit:

"We, the jury, find for the plaintiff in the sum of twelve hundred dollars.

"JEFF. K. CLARK, *Foreman.*"

It is therefore considered by the court that the plaintiff,
19 Lawre-ce Hart, have and recover of the defendant, The Pennsylvania Railroad Company, as well the said sum of twelve hundred dollars, the damages aforesaid by the jury assessed, as also the costs herein expended, and have thereof execution.

And afterward, to wit, on the 9th day of April, A. D. 1881, the following further proceedings were had and appear of record, to wit:

Order of Court Allowing Bill of Exception to be Filed.

LAWRENCE HART, Plaintiff,
vs. } 1695.
PENNSYLVANIA RAILROAD Co., Defendant.

Now comes the plaintiff, by attorney, and presents to the court its

bill of exceptions, which is allowed, signed, and ordered to be filed as a part of the record herein.

Which said bill of exceptions is in the words and figures following, to wit:

Bill of Exceptions.

In the United States Circuit Court in and for the Eastern District of Missouri.

LAWRENCE HART, Plaintiff,
vs.
20 THE PENNSYLVANIA RAILROAD COMPANY, Defendant.

Be it remembered that on the 6th day of April, A. D. 1881, and at the March term, 1881, of said court, this cause came on for trial to a jury, when the following proceedings were had:

The plaintiff, to sustain the issues joined, offered and read in evidence the deposition of Richard Johnson.

Which said deposition is in the words and figures following, to wit:

Deposition of Richard Johnson.

UNITED STATES OF AMERICA,
Northern District of New York, State of New York, Saratoga County, } *ss:*

Be it remembered that on this 24th day of August, A. D. 1880, I, William Leston, a notary public in and for the State and county aforesaid, and duly commissioned and qualified under the laws of the United States to take depositions for use in the circuit courts of the United States, did call and cause to be and personally appeared before me, at my office, at Saratoga Springs, in the said district and State, Robert Johnston, to testify on the part and behalf of
21 the plaintiff in a certain suit or matter of controversy now depending and undetermined in the circuit court of the United States for the eastern district of Missouri, at St. Louis, in the district aforesaid, wherein Lawrence Hart is plaintiff and The Pennsylvania Railroad Company is defendant, and the said

Mr. ROBERT JOHNSTON, being duly sworn, did depose and say:

Examined by C. S. Lester for plaintiff:

Q. What is your age and occupation?

A. I am 21 the 6th of this month, and a groom and rubber by occupation.

Q. How long have you known Lawrence Hart?

A. Have known him three years, but not to speak to him during all of that time?

Q. Were you in his employ in 1879?

A. I was, in the fall of 1879; left Jerome Park to go to St. Louis with the horses; was employed by him to do so.

Q. When you left Jerome Park, where did you go?

A. Went to Jersey City.

Q. What horses had you in your charge when you arrived at Jersey City?

22 A. Had Buckeye, Charley Howard, Clemmie G., Bonnie Canne, and Redding.

Q. What was done with the horses at Jersey City?

A. They were put in the stables on Sunday, and on Monday evening they were put in a car for St. Louis.

Q. Were they all placed in one car?

A. All in one car.

Q. Was there anything else in the car with them?

A. Nothing but their feed—things that they travelled with—a little boy and myself.

Q. What was the name of this little boy, and where is he now?

A. Thomas Conners; do not know where he is now.

Q. After the horses were placed in the car, as you have stated, state what occurred.

A. Left Jersey City at about 6 o'clock in the evening, and got to Pittsburgh about 2 o'clock Wednesday afternoon, and remained there until seven or eight o'clock in the evening; went over there on to another road; changed engines, but not cars. The next morning we arrived in Dennison, Ohio, about seven o'clock. We

23 got to Newark, Ohio, about 1.20 p. m., and laid there till five o'clock. About half past six o'clock or twenty minutes to seven we met with an accident. We left Newark about five o'clock, and the accident happened while the cars were in motion, but the engine was still.

Q. State what occurred after you left Newark.

A. We stopped to allow a train to pass; then the engine moved off with the cars, and the coupling snapped at the head of a hill; the engine run off with the other cars in front, and stopped at the station below and waited for us. The cars had such a turn of speed that when we struck the other car our car was smashed in pieces, and also four more cars were broken.

Q. Was it the coupling of the car in which you were that broke?

A. The coupling was the one which fastened our car with the one ahead.

Q. Can you tell as near as possible the distance your car ran from the time the coupling broke until it struck the balance of the train?

A. About four miles.

24 Q. When the horses were placed on board the train at Jersey city, what was their condition?

A. They were all in good condition.

(Def't's counsel objects to question.)

Q. State what happened to the horses when the car in which you were struck the remainder of the train.

A. *Bonnie Carnie* had her legs broke, three of them; had a big cut six inches deep in her neck; had almost every rib broken on one side; was cut about four inches over the right eye. *Buckeye* was very badly hurt on the side; all the skin was rubbed off, besides having

two or three ribs broken; was cut over the left eye, and in the stifle, skin was rubbed off his back near the tail, also a little on the shoulder. *Clemmie G.* was badly cut in the neck; was strained across the loins; also was cut in the stifle; cut on the right foreleg below the knee, and over the left eye, also in the fetlock. *Redding* was cut in both stifles, also below the hock; his hip was knocked down; he was also cut over the left eye, also on the foreleg a little. *Charley Howard* was cut twice in the head; was cut on the foreleg; on the hind leg near the fetlock; skin a little rubbed off on the shoulder.

Q. What happened to the car?

A. The car was smashed into very small pieces; even the trucks on which the car ran were broken into four or five pieces; two of the wheels were split in half; the car which we ran into was very badly damaged, too.

Q. How many cars were behind your car—attached to it?

A. About sixteen or eighteen.

Q. Were they empty or loaded?

A. Loaded.

Q. How many cars were ahead of the car which you ran into, besides the engine?

A. About seven.

Q. When you struck those cars, where was the engine?

A. When we struck the cars the engine was ahead waiting.

Q. Was there any brakman or man connected with the train in or about the car in which you were?

A. No, sir.

Q. Was there any brakeman on the cars in the rear of you?

A. There was; the train broke into three pieces; we were in the [m]*d*iddle section.

Q. Do you know what caused the train to break into three pieces?

A. The sudden jerk.

Q. Did you perceive the jerk at the time?

A. Yes, sir.

Q. At the time of this jerk, were the cars standing still or in motion?

A. Moving very slow.

Q. What persons connected with the road were there immediately after the accident?

A. The engineer, fireman, station master, conductor, and brakeman.

Q. State whether at that time anything was said by these persons as to the cause of the accident.

(Question objected to, as incompetent and irrelevant.)

A. I didn't hear them say anything.

Q. Did you make any effort to communicate the fact of the accident having happened to Mr. Hart?

(Question objected to, as incompetent and irrevelant.)

A. Yes, sir. I tried to telegraph to him; I went to the telegraph operator, in the telegraph office in the station-house at Black Lick,

asking him if I could send a dispatch to Baltimore to Mr. Hart, the plaintiff, this was about a quarter past nine in the evening; the operator was a little, oldish man, with a sandy mustache. He was about 30 years of age. He said he could not send one without I'd go to Columbus. I asked him if he wanted pay for it, and the answer that he gave me was that I'd better wait till morning.

Q. After the accident what was done with the horses?

A. Charley Howard was put in a barn in pretty fair circumstances, the barn he was in. Redding was put in an open lot full of stones. Clemmie G. was put in an open shed, no boards on either side of the shed, and only half a roof. Bonnie Carrie was turned out by a haystack with a blanket. The blanket was left on
28 her till she died. Buckeye was also put in an open stable, the stable had no roof, half on one side was all knocked down. Next morning men came from Columbus and took Clemmie G., Buckeye, Redding, Charley Howard to Columbus, I went with them; we were taken off there and put in a sheep shed or open barn.

Q. How long did they remain there?

A. About nine days.

Q. How far is Columbus from Black Lick?

A. It is called fourteen miles.

Cross-examined by FRANK CHASE, counsel for def't:

Q. What business are you now engaged in?

A. Am grooming yet, but out of employment at present.

Q. Where do you reside?

A. New York city, 261 W. 30th St.

Q. What is your father's name?

A. His name was William; my father and mother both dead; am unmarried.

Q. With whom do you live at N. Y.?
29 A. With Mrs. Coleman.

Q. Is she related to you?

A. She is an aunt.

Q. How long have you lived in New York City?

A. Have lived there off and on the past 9 years. I have two brothers, named William and James.

Q. What business are they in?

A. One is a clerk, the other a parcel boy.

Q. What are you doing here at present?

A. Nothing; I came here with race horses.

Q. Have you seen Mr. Lawrence Hart here frequently this season?

A. I've seen him, but haven't spoken to him but once or twice.

Q. Have you talked with him or any one else about your testimony in this case?

A. No, sir.

Q. Have you talked with Mr. Hart about the accident since it happened?

A. Yes, sir; once at Columbus, last fall.

Q. You didn't make any memorandum in writing at the time of the nature and extent of the injuries to these horses, did you?

A. No, sir.

30 Q. How is it that you remember and are able to state so particularly the nature and extent of the injuries to these horses?

A. Because I dressed all the wounds on these horses and put medicine on the sores, for the doctor was afraid of Redding and Charley Howard.

Q. What doctor do you speak of?

A. Dr. Rose, of Columbus. He was a veterinary surgeon, I believe.

Q. Why was he afraid of these two horses?

A. Because they were so vicious.

Q. How long did you continue with the horses after the accident?

A. Until they left Columbus.

Q. At the time you left them, Clemmie G., Charley Howard, Redding, and Buckeye were in a fair way to recover from their injuries, were they not?

A. All except Buckeye and Clemmie G. were.

Q. Redding and Charley Howard had no limbs injured or broken, had they?

A. Yes, sir. If a horse is cut in the stifle or his hip knocked down, he is injured.

Q. But there was nothing in the condition of Redding or

31 Charley Howard to indicate that they wouldn't soon recover, was there?

A. Yes, sir; there was some doubts of Redding.

Q. Were the injuries to Buckeye and Clemmie G. more serious than to the others?

A. Yes, sir.

Q. You say that Buckeye had two or three ribs broken; how do you know it?

A. The doctor said so, and every one who saw him thought so. His ribs were sunk in, he coughed, and had difficulty in breathing.

Q. In which stifle was [he] cut?

A. In the left, about a quarter of an inch long.

Q. How much of a cut was there over the left eye?

A. About four inches.

Q. Were these cuts healed up at the time you last saw him?

A. No, sir.

Q. What was the extent of the cut in Clemmie G.'s neck?

A. About 4½ inches long and 2½ inches deep.

Q. How do you know how deep this cut was?

32 A. Because the doctor measured it with an instrument one day.

Q. How do you know that Clemmie G. was strained across her loins?

A. Because she could not walk as a horse ought to walk with her hind legs.

Q. Hadn't she improved in that respect a good deal at the time when you last saw her?

A. Yes, sir.

Q. What was the extent of the cuts in her stifle, fetlock, leg, and over the left eye?

A. Stifle cut about 2½ inches long, the cut in fetlock about an inch long, in the leg about three inches long, and over the left eye about two inches.

Q. Were these cuts of Clemmie G. healed up at the time you last saw her?

A. No, sir.

Q. They were healing up?

A. They were healing.

Q. Were any of these horses lame by reason of their injuries at the time you last saw them?

A. Yes, sir; Clemmie G., Redding, and Buckey-e were lame.

Q. Were they not all in a fair way to recover from their
33 lameness at that time?

A. No, sir: Clemmie G. and Redding were not.

Q. Who took charge of the horses when they left Columbus?

A. A colored boy and Tommy Conners. Tommy Conners was in the employ of Mr. Hart and the colored boy was not. He lived in Columbus, and was in the employ of the railroad company.

Q. Are the statements which you have made, as to the cause of the accident, derived from your own personal knowledge, or derived from what you heard others say in regard to it?

A. I make them from the knowledge of which I see that night.

Q. You were inside the car with the horses, were you not?

A. I was sitting in the door with the door half open for ventilation.

Q. You didn't know that the train had seperated until after the accident, did you?

A. Yes, sir.

Q. How long before the accident did you discover that fact?
34 A. About five minutes before we struck.

Q. Did you give any alarm, or try to see any one connected with the train?

A. I was so situated that I could not. I could see a man on the back portion of the train. When we passed Black Lick station I hollered to a man there.

Q. And you didn't offer to try to stop the train?

A. No, sir.

Q. How do you know that the coupling snapped at the head of the hill?

A. Because it evidently made as much noise as a pistol.

Q. Was it dark?

A. No, sir; just getting dark.

Q. How do you know that the engine waited at the station?

A. Because I looked out of the car and saw her, and the other cars run on there before she stopped.

Q. Did you see the brakeman on the cars in the rear of you?

A. Yes, sir.

Q. Did they do all they could to stop the cars?

A. They did stop those behind.

Q. How many cars were in the middle section?

35 A. About sixteen or eighteen cars. There were about five cars in the last section.

Q. How fast was the middle section going at the time of the collision?

A. To the best of my opinion very nearly a mile a minute.

ROBERT JOHNSTON.

Also the deposition of Thomas Connors, which said deposition is in the words and figures following, to wit:

Deposition of Thomas Connors.

UNITED STATES OF AMERICA,
Eastern District of Missouri,
State of Missouri, City of St. Louis, } ss:

Be it remembered that on this 12th day of October, in the year of our Lord 1880, I, Benj. F. Rex, notary public within and for the city of St. Louis, in the State of Missouri, did call and cause to be and personally appear before me, at my office, at rooms 19 & 20, No. 203 N. 3d street, in said city, in the district and State aforesaid, Thomas Connors to testify and the truth to say, on the part and behalf of the plaintiff, in a certain suit or matter in controversy now depending and undetermined in the circuit court of the

36 United States for the eastern district of Missouri, at St. Louis, Missouri, in the district aforesaid, wherein Lawrence Hart is plaintiff, and Pennsylvania R. R. Co., defendant.

And the said Thomas Connors, being about the age of fifteen years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, and being carefully examined before me, the said Thomas Connors did thereupon depose, testify, and say as follows:

My name is Thomas Connors. I am fifteen years old. I live in Albany, New York. I was born there.

I know Lawrence Hart. I was bound apprentice to him, and helped attend to his horses. He found me at New York city, in an orphan asylum. Last year I started from Jersey City to St. Louis with some horses belonging to him.

The names of the horses were Redding, Clemmie G., Bonnie Carrie, Charley Howard, and Buck Eye.

37 There was a man named Robert Johnson with me in the car.

He was about twenty-one years of age. We started from Jersey City; came through all right till we came to Black Lick station, and then I saw the engine jerk the cars three times with three sudden jerks, and our train broke in three places. The caboose was broken loose also, and our car and Mr. Williss's car was broken, and our car was in the middle piece. There was three or four cars on to the engine, which went away from us at full speed, while we were going very slow. I saw the brakeman wave his lamp, and

the engine stopped about a half a mile away from us. While we were going at a very rapid speed, and we was going still faster, when we smashed into the other car.

I was sitting at the door, at the left-hand side of my own car, the car in which the horses were. Mr. Johnson was with me.

It was about seven o'clock in the evening.

38 The car that our horses were in was the first car of the middle section when the train broke.

As soon as our car struck the rear car attached to the engine, Mr. Williss's car, our car bounced back, and Clemmie G. was laying on the left-hand side of the car, Bonnie Carrie was laying on the track, very badly hurt. Redding, he jumped up and ran down the road. Charlie Howard jumped up and ran up to the fence, and a man caught him there. Buckeye, he got up, and a man held him and fetched him to the stable.

I could not tell how far our car was thrown when it struck.

I fell off on the bank. There was another man in the car that I was on; he was beating his way, and when the accident occurred he held one of the horses, and after that took it to the stable.

When the engine gave the jerks of which I have spoken, the train was moving slowly, and at every jerk it went faster.

After the train was broken the engine and the cars at-
39 tached to it went about a half a mile, as near as I can judge, before it stopped.

I think the engine and cars attached to it got about a quarter of a mile away from us before the brakeman swung his lantern and the engine and cars were stopped. That was the brakeman who was on the cars attached to the engine. There was no brakeman on the car I was attached to, after the train broke, or on that section of the train; I could not see any.

After the accident Clemmie G. was slightly hurt, and Redding and Charlie Howard the same; Bonnie Carrie she died next morning, and Buckeye was hurt more than the others, except Bonnie Carrie. I saw the horses, except Bonnie Carrie, afterwards at Columbus, the next day; they were every one stiff. After the accident our car was all smashed up; it was thrown against the car in front of it. The wheels were on the track, but the cars *was* smashed all to pieces; the biggest pieces of it were the roof and the door.

40 Neither of the horses were left in our car after the acci-
dent occurred; they were all thrown out.

I know Charlie Howard was hurt in the head; I do not remember how the other horses were hurt; they had so many scratches that I could not tell about each of them.

After the horses were hurt I went on with them to Columbus till the doctor gave them into the railroad company's hands; then I started to St. Louis with the horses, and staid there till fall, and all fall, until about three months ago. The horses appeared better in St. Louis than they did in Columbus; their sores got well. Mr. Hart had a big box in the car with the horses, before the accident, which was full of things belonging to the horses. The box got smashed up when the accident occurred, and, of course, was laying

on the ground. We picked up all of the things which were in it which we could find and carried them and put them in a wagon, and took them to the warehouse; it was the depot warehouse. Mr. Hart was not along with me on this train. The horses were
41 at Columbus about a month before they were shipped on to St. Louis. We were doctoring them there.

Cross-examination.

Cross-examination by E. Pattison, att'y for def't:

Ques. How do you know that you are fifteen years old?
Ans. Because I was born the 27th of March, 1865.
Ques. Who told you that?
Ans. I always remembered it.
Ques. Did you have a watch at that time?
Ans. No, sir.
Ques. When did you arrive here in St. Louis this time?
Ans. Last Sunday.
Ques. Who did you come on with?
Ans. Mr. Carlin, as his boy. I do not know what he does. I came on with his horses.
Ques. Where did you come from when you came here?
Ans. Moberly, Mo.
Ques. Are you still working for Mr. Lawrence Hart?
Ans. No, sir.
Ques. Who brought you here to this office?
Ans. Pet Parle.
42 Ques. Who is he?
Ans. A boy about 20 years old.
Ques. What did he say he wanted you for?
Ans. Did not say that he wanted me for anything.
Ques. Did you know when you came to this office that you were going to testify about this matter?
Ans. I knew I was coming to tell about this accident; I saw the lawyer this morning.
Ques. How do you know what time it was when this accident happened?
Ans. I do not know it at all; I did not say that I knew, but that I guessed it was about seven.
Ques. What makes you think it was about seven?
Ans. Cause it was getting a little dark; they were just lighting the lamps in the houses.
Ques. You do not know certainly whether or not there was any brakeman on the section of the train in which your car was do you?
Ans. No, sir; I wont say whether there was or not, I only know I did not see any.
43 Ques. This was a box car that you and the horses were in, was it?
Ans. Yes, sir.
Ques. Closed all around and above except at the doors?
Ans. Yes, sir; there was a door at each side.

Ques. How may cars were there in that train all together?

Ans. I can't tell.

Ques. Have you ever seen Johnson since that day?

Ans. Yes; I have seen him at Columbus, but not since then; he remained as long as I did, till the horses were shipped to St. Louis; I live here at Mr. Parlés, and St. Louis is my home.

THOS. CONNORS.

Also the deposition of Thomas Hoobler, which is in the words and figures following, to wit:

Deposition of Thomas Hoobler.

1 Q. State your name, age, residence, and occupation?

A. Thomas Hoobler; age, 31 years; residence, Fraziers-
44 burg, Muskiegan Co., Ohio; occupation, railroading.

2 Q. State what your occupation was on the 23[d] of October, 1879?

Ans. Freight conductor on the Pittsburgh, Cincinnati & St. Louis Railway.

3 Q. How long had you been in the employ of the P., C. & St. L. R'y as freight conductor?

Ans. At that time about 13 months.

4 Q. What other experience h-d you as a railroad man?

Ans. Well, sir, I fired four years and run an engine about 6½ years, and broke for about 18 months.

5 Ques. How long altogether were you in the employ of the P., C. & St. L. Railway Co.?

Ans. Between eight and nine years, may be a little longer.

6 Ques. State whether you know anything about the accident which occurred near Black Lick, in Ohio, on the 23[d] day of October, 1879, when the plaintiff's horses were injured; if so, state what the accident was, how it occurred, and all about it.

Ans. Well, as was approaching Black Lick station I says to White, my back br*eak*man, that we would have to take the siding,
45 as train No. 17 coming east had the right of way. We applied br*eak*s with the intention of stopping the train to take the siding, and the engineer whistled off brakes, the train parting in three sections, causing the middle section to run into the first section of the train, and the car in which the plaintiff's horses were was badly mashed up. It was the third section of No. 12, west bound, and I had charge of it. Engineer, Wm. Gardner; fireman, Ervin Shamel; Oscar White, brakemen, and T. W. Barr, br*eak*man. The accident occurred at Black Lick, Franklin Co., Ohio, right at the station right between the sidings, probably 200 yards west of the east end of the siding.

7 Ques. How fast were you running at the time?

Ans. Between 4 & 6 miles an hour.

8 Ques. Did the accident occur on the siding, or on the main track?

Ans. On the main track.

9 Ques. What was the last stop made by you prior to the accident?

46 Ans. Kirksville, where we stopped and got our orders.

10 Ques. What orders did you receive at Kirkersville?

(Question objected to by pl't'ff's att'y.)

Ans. I think it was an order to meet No. 25 at Kirkersville; we lay there on the siding about 30 minutes.

11 Ques. State why you concluded to take the siding at Black Lick.

Ans. Well, I looked at my watch and saw that I had not time to make Big Walnut siding for No. 17, therefore, according to my watch, we would have to lay at Black Lick for No. 17.

12 Ques. How far was Big Walnut siding from Black Lick?

Ans. About 3¼ miles west.

13 Ques. Where was the customary and usual place for passing No. 17 for your train?

Ans. Big Walnut.

14 Ques. What time was it by your watch when you looked at it before you gave the order to take the siding at Black Lick?

Ans. It was about 19 minutes after 7 o'clock p. m. by my watch.

15 Ques. Was it daylight or dark?

Ans. No, sir; it was dark.

16 Ques. How many cars were there in the train?

47 Ans. 31 loads.

17 Ques. What time was you due at Big Walnut siding?

Ans. 6.44.

18 Ques. State whether you received any orders at Kirkersville as to passing No. 17 at Big Walnut siding.

Ans. No, sir.

19 Ques. How long, according to the rules of the road, was No. 17 required to wait for your train at Big Walnut?

Ans. 45 minutes.

20 Ques. What time did you leave Kirkersville?

Ans. About 6.50, I guess.

21 Ques. State whether at Kirkersville you compared time with the engineer and operator; if so, state the result.

Ans. I compared time at Kirkersville with the engineer & operator, and our watches showed the same time.

22 Ques. State whether you made any comparison with the watch of the engineer after the accident; and, if so, what was the result of that comparison?

Ans. I compared time with the engineer after the accident at Black Lick, and found my watch 10 minutes faster than the engineer's.

48 23 Ques. Can you explain how this discrepancy happened?

Ans. Nothing more than the jeweler told me—that the hair spring caught on the regulating post; that would shorten the spring and cause it to gain time rapidly.

(Answer objected to, as incompetent [and] heresay, by counsel for plaintiff.)

24 Ques. State what kind of a watch you had; how long you had carried it; whether it had run correctly theretofore or not.

Ans. I had a Rockford, Ills., watch; movement No. 9394. I had carried it about 14 months before the accident, and have carried it ever since, and it has kept correct time.

25 Ques. Is it the watch that you used while you were freight conductor for the P., C. & St. L. R'y Co.?

Ans. Yes, sir.

26 Ques. When you compared your watch with the engineer's after the accident, had it actually gained 10 minutes?

Ans. Yes, sir; it had.

27 Ques. What would have been your action, with reference to taking the siding at Black Lick, if your watch had not gained this 10 minutes?

49 Ans. I would not have thought of taking the siding, as we would have made our meeting point at Big Walnut.

28 Ques. How near to Black Lick were you when you looked at your watch?

Ans. I looked at it two or three times coming down the hill—within a mile, a half mile, & two miles of there.

29 Ques. At what point was you in the train when you told Mr. White you would take the siding?

Ans. Standing in the caboose door.

30 Ques. Where were the brakemen?

Ans. Up on the top of the cars.

31 Ques. What did you say to Mr. Oscar White?

Ans. Well, I told him we would have to hold her up for the siding, as we had lost our rights with No. 17.

32 Ques. What did he then do?

Ans. He applied the brakes, and commenced steadying the train for the purpose of heading into the side-track.

33 Ques. How near to the side-track were you when White commenced to apply the brakes?

Ans. About 40 or 50 car-lengths; about the usual distance when you head in there.

34 Ques. What did White do with regard to signaling the
50 engineer and forward brakeman, if anything?

Ans. He gave signal to stop; he signaled the front brakeman with his lamp that we were going to take the siding.

35 Ques. How fast was the train going at the time the engineer whistled off brakes?

Ans. 4 to 6 miles an hour; very near stopped.

36 Ques. What was the usual way of signaling the engineer to stop, or for any other purpose?

Ans. Swing lamp at right angles with the train and communicate with the engineer through signals?

37 Ques. Now, just explain what lead to the breaking of the train?

Ans. Well, I think the engineer using steam when the brakes were set on the hind end of the train caused the parting of the train.

38 Ques. Why did the engineer whistle off-brakes?
Ans. Because by his watch he had a right to go to the Big Walnut, the meeting-point of No. 17.
39 Ques. When the train is in motion, who has control of it?
Ans. Conductor has control of the train.
40 Ques. Did you notice the horses of plaintiff after the accident?
51 Ans. Yes, sir.
41 Ques. What was their condition?
Ans. One was killed; all were hurt, more or less.
42 Ques. On what railroad did this accident happen on?
Ans. It happened on the C. & V. division of the P., C. & St. L. R'y.
43 Ques. What is the eastern terminus of the P., C. & St. L. R'y?
Ans. Pittsburgh, I guess.
44 Ques. Did you submit your watch for examination to any jeweller after the accident; if so, to whom?
Ans. Yes, sir; to W. A. Johnson, jeweller, of Columbus, Ohio.
45 Ques. Did he examine it, an- ascertain whether it was out of fix or not?
Ans. Yes, sir.
46 Ques. Did he ascertain why it had gained time?
Ans. Yes, sir.
47 Ques. How long did he have charge of your watch?
Ans. While I made two round trips; about four or five days.

52 Cross-examination:

1 Ques. Are you yet in the employ of said company?
A. No, sir.
2 Ques. When did you cease your connection with it?
Ans. Along about the middle of last May.
3 Ques. How soon after this accident.
Ans. About 6 or 7 months.
4 Ques. What was the name of the engineer, and where is he?
Ans. Wm. Gardener; he is in here now, in this room.
5 Ques. How many brak-men were there on the train, and where are they?
Ans. I had two; they are in this room.
6 Ques. You had on the train when the horses were injured, 31 cars & 2 brakemen. What was the position of the forward brakeman?
Ans. Generally about 6 cars from the engine?
8 Ques. Was he or not at his post when you gave Mr. White, the back brakeman, orders to signal the engineers to stop?
Ans. Yes, sir: he was.
8 Ques. What is the length of the siding at Black Lick station?
53 Ans. One of them would hold about 30, and the south one would hold about 40 cars.
9 Ques. You headed for the north side, did you?
Ans. Yes, sir.

10 Ques. How far east of the station is the switch for the north siding?

Ans. About 60 feet west of the station.

11 Ques. What is the grade of the railroad at Black Lick and east of it going west?

Ans. It is down going west.

12 Ques. Is it considerable down grade there?

Ans. Yes, sir.

13 Ques. Is it not a fact that trains have been frequently broken apart by reason of the down grade at Black Lick?

A. I never knowed of it and never heard of it.

14 Ques. You left Kirksville how much behind time?

Ans. Very near an hour, I guess.

15 Ques. For what distance east of Black Lick is there a down grade west?

Ans. From 3 miles & a half to 4 miles.

16 Ques. Then, you have 3½ to 4 miles heavy down grade before you reach Black Lick?

Ans. Yes, sir.

54 17 Ques. How far east of the Black Lick were you when you gave Mr. White orders to signal the engineer to stop?

Ans. Well, about the usual distance for stopping; about 40 or 50 car lengths; maybe a little further.

18 Ques. How soon after you gave the order aforesaid was it until Mr. White applied the brakes?

Ans. He went right to work and commenced stopping the train.

19 Ques. How soon after Mr. White went to work to stop the train by applying the brakes was it until the engineer whistled off brakes and began to use steam *steam*, and start the train ahead?

Ans. I don't know how long; hardly making *making* five minutes; maybe not that long.

20 Ques. Mr. White had succeeded then in bringing the train almost to a stand still, when the engineer began to use steam and break the train apart, had he?

Ans. Yes, sir.

21 Ques. If the engineer had not began to use steam the train would not have broken apart, would it?

Ans. I don't think it would.

55 22 Ques. Then the engineer broke the train apart by not obeying the signals given by Mr. White (if he saw them), did he not?

Ans. I don't know whether he saw them or not.

23 Ques. The question is, if he had seen them and obeyed them, whether, in your judgment, the train would have been broken apart?

Ans. I don't think it would; because using steam, the br*eak* being on *on* the hind end, is very straining on the coupling.

24 Ques. Do you know, by your conversation with the engineer or otherwise, whether the engineer saw the signal to stop given by Mr. White?

Ans. I don't think he saw the signal until after the train was broken.

25 Ques. Did he tell you so?
Ans. No, sir; I don't think he did.
26 Ques. Did he whistle off brakes?
Ans. Yes, sir; he whistled off brakes.
27 Ques. Did he do this before or after he began to use steam?
Ans. Before.
28 Ques. Had he whistled down brakes before that?
Ans. Before the train was broken in two? No, sir.
56 29 Ques. The train was under your charge, and when you gave the order to stop at Black Lick it was the duty of the engineer to obey that order, was it not?
Ans. I was under the impression that he would head in there anyway. The hind man was the only one I told.
30 Ques. The question is, whether it was not the duty of the engineer when you, as conductor, gave an order to stop, to obey that order?
Ans. Yes, sir, it is, unless it is contrary to the rules and regulations of the road.
31 Ques. It is your opinion, is it not, if your order to stop had been seen and obeyed, the accident caused by the breaking apart of the train would not have occurred?
Ans. Yes, sir; it is.
32 Ques. How many sections did the engineer break the train into by using steam and starting ahead when the hind brake was set, as you have explained, and how many cars about were in each section?
Ans. Into 3 sections; about 7 cars in first section with the
57 engineer, 9 in the middle section, and about 15 in the rear section.
33 Ques. There was no brakeman, was there, on the middle section?
Ans. No, sir.
34 Ques. How far did the first and second sections get apart before they struck together?
Ans. Probably 4 or 5 car lengths.
35 Ques. Please explain in what cars the horses were with reference to the 3 sections into which the train was broken?
Ans. There were 5 horses in the front car of the middle cut or section and two in the back car of the front section.
36 Ques. Would these cars have come together with sufficient force to have broken them up if there had been a brake set on the middle cut or section?
Ans. One brake would not have helped much, but another one would.
37 Ques. Was there any damage done to the rear end of the second cut or section or the front end of the last cut or section?
Ans. No, sir. The second and third sections did not come into collision.
58 38 Ques. Was that not because the brakes were set on the last sections?
Ans. Yes, sir.

39 Ques. It is your opinion, is it not, that the engineer concluded that he had time to make Big Walnut, and hence started ahead after you had given the order to Mr. White to stop the train?

(Objected to by counsel for def't.)

Ans. I presume he had, or he would not have started.

40 Ques. Was there any controversy or talk between you and the engineer or other train hands, after the accident, as to the cause of it?

Ans. Well, we went and looked and hunted up a broken link, and that was about all we had to say. We commenced clearing up the wreck. I walked down from the hind end to the wreck and met the engineer, and I asked him where he was agoing. He said he was going to Big Walnut, where he had a right to. I told him the time was up; that we had lost our right, and pulled my watch out and compared time with him, and found that my watch was about 10 minutes faster than his.

41 Ques. Was the link which was broken sound iron?

59 Ans. It was sound iron only at the weld; there was an old break in it, which nobody could have seen.

42 Ques. The link was an old one, was it?

Ans. I could not say whether it was an old one or not; it was an ordinary link, such as we use every day.

43 Ques. How much behind time was you when the accident occurred?

Ans. I guess we were nearly an hour late; ma-by 30 or 40 minutes.

44 Ques. Had you made up any of the lost time between Kirkersville & Black Lick?

Ans. Not very much.

45 Ques. About how much?

Ans. I don't know; three or four or five minutes maybe.

46 Ques. How was it that you were behind time?

Ans. Other trains were late—caused us to be late.

47 Ques. What was the ordinary running time of your train per hour?

Ans. I think we had orders to run 18 miles per hour.

48 Ques. How far is it from Black Lick to Kirkersville?

Ans. Between 10 & 11 miles.

60 Re-examination

Ques. How many brakeman was it usual to have on trains of that size on that road?

Ans. Two brakeman.

2 Ques. Did you tell Mr. Oscar White to signal the engineer?

Ans. I don't think I did. I told him we would head into Black Lick. I supposed the engineer's watch showed the same time as mine, and he would go in there without being told.

3 Ques. How much time elapsed between the time that you first spoke to Mr. White about going into the siding and the whistling off brakes by the engineer?

Ans. Probably not more than five minutes, nearly; a little longer.

4 Ques. Was there, to your knowledge, any signal whatever to go into the siding at Black Lick given by Mr. Oscar White or any other man to the engineer?

Ans. Mr. White signalled to the first brakeman. I don't suppose the engineer saw any signal, as he was not looking for any at that point.

61 Re-cross-examination:

Ques. Would Mr. White have been justified, under the rules of the company, after what you told him, in setting the brakes to stop the train without having given a signal to stop?

(Question objected to by def't's att'y.)

Ans. We generally set the brakes and give the signals at the same time.

2 Ques. You told him to head into Black Lick, did you not?

(Objected to, as incompetent by def't.)

Ans. Yes, sir.

3 Ques. It was then his duty to give a signal to stop, was it not?

Ans. Not exactly altogether his duty; if he supposed that the engineer knew he was going in there any how, he would not signal.

4 Ques. He did signal, did he not?

Ans. I guess he did, after he seen he was not going to stop.

All the re-cross-examination objected to, because it is not a cross-examination of any new matter brought out by defendant's attorney.

Further deponent saith not.

THOMAS HOOBLER.

62 The plaintiff also offered and read in evidence a bill of lading, issued by the defendant to the plaintiff, dated October 20th, 1879.

Which said bill of lading is in the words and figures following, to wit:

Bill of Lading.

Form No. 39. N. J.

Limited Liability Live-Stock Contract for United Railroads of New Jersey Division. No. 206.

JERSEY CITY STATION, P. R. R.,
——— —, 187–.

Lawrence Hart delivered into safe and suitable cars of the Pennsylvania Railroad Company, numbered M. L. 224, for transportation from Jersey City to St. Louis, Mo., live stock, of the kind, as follows: One (1) car, five horses, shipper's count, which has been received by said company, for themselves and on behalf of connecting carriers, for transportation, upon the following terms and conditions, which are admitted and accepted by me as just and reasonable:

First. To pay freight thereon to said company at the rate of ninety-four (94) cents per one hundred pounds (company's
63 weight), and all back freight and charges paid by them, on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation:

If horses or mules, not exceeding two hundred dollars each.
If cattle or cows, " " seventy-five dollars each.
If fat hogs or fat calves, " " fifteen dollars each.

If sheep, lambs, stock hogs, or stock calves, not exceeding five dollars each.

If a chartered car, on the stock and contents in same, twelve hundred dollars for the car-load.

But no carrier shall be liable for the acts of the animals themseves, or to each other, such as biting, kicking, goring, and smothering, nor for loss or damage arising from condition of the animals themselves, which risks, being beyond the control of the company, are hereby assumed by the owner, and the carrier released therefrom.

Second. Upon the arrival of the cars or boats containing
64 said stock at point of destination, the shipper, owner, or consignee shall forthwith pay said freights and charges, and receive said stock therein, and unload the same therefrom; and if, from any cause, he or they shall fail or refuse to pay, receive, or unload, as aforesaid, then said company, or other carrier, as the agent of such shipper, owner, or consignee, may thereupon have them put and provided for in some suitable place, at the cost and risk of such shipper, owner, or consignee, and at any time or times thereafter may sell the same, or any number of them, at public or private sale, with or without notice, as said agent may deem necessary or expedient, and apply the proceeds arising therefrom, or so much thereof as may be needed, to the payment of such freight and charges and other necessary and proper costs and expenses.

Third. When necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier
or carriers for transportation, upon such terms and conditions
65 as the carrier may be willing to accept; provided that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate; but in no event shall one carrier be liable for the negligence of another.

Fourth. All live stock transported under this contract shall be subject to a lien, and may be retained and sold for all freight or charges due for transportation on other live stock or property transported for the same owner, shipper, or consignee.

Fifth. This company's liability is limited to the transportation of said animals, and shall not begin until they shall be loaded on board the boats or cars of the company. The owner of said animals, or some person appointed by him, shall go with and take all requisite care of the said animals during their transportation and delivery,

and any omission to comply herewith shall be at the owner's risk.
Witness my hand and seal, this 20th day of Oct., 1879.

LAWRENCE HART, *Shipper.* [L. S.]

Attest:
E. BUTTER.
W. J. CHARMERS,
Company's Agent.

66 *Deposition of Lawrence Hart.*

LAWRENCE HART, being duly sworn, testified as follows:

By Mr. STEWART:

Q. You are the plaintiff in this case?
A. Yes, sir.
Q. And the owner of the horses sued for here?
A. Yes, sir.
Q. You were in Jersey City when a contract was signed for the shipment of these horses west?
A. Yes, sir.
Q. Tell what office you went to?
A. The Pennsylvania Railroad Company's office.
Q. Who did you see there?
A. I seen some of the clerks that used to ship the horses; I went to the Pennsylvania Railroad Company's office, where I used to ship them every year.
Q. What office was it; what was it called?
A. The Pennsylvania freight office.
Q. Do you remember who you saw there—the names of the parties?
A. I knew all the clerks there to talk to them, and they knew me, but I did not know their names.

Q. State what you said when you went in—what you said
67 to the parties in the office.

A. The clerks noticed me, and I nodded to them.

(Objected to.)

Mr. STEWART: I propose to prove that the defendant—that these parties, these clerks, knew what he was shipping at the time.

The COURT: I will allow it to be shown, subject to the ruling already announced.

Q. State what you said respecting the horses you desired to ship.
A. I went in and asked the clerk for the rates; he told me; I asked him was that the best he could do; I says: "Perhaps I can get them shipped by the New York Central or the Erie Railroad at a less rate;" he says there is no use of your going to try them, for they are all pooled. And we talked there awhile, and I says: "I will go up and see the Erie Railroad and how." I went over to the Erie Road and found that it was the same thing; the clerk told me before I left they were all one rate—pooled, or some such
68 thing. I went to the Erie Road and found it was the same thing, and I came back and I told him "There is no use in

my going any further." I preferred the New York Central and the Pennsylvania as being the two best roads. Says I: "I want to get the fastest freight train you have." He says: "I will try it." He knew some of the horses, for two or three years before that he shipped them back and forth, I think, two or three times. He knew Clenny C. and Reading very well. He had bet on Clenny G. at Saratoga two years previous to that, and he knew the horse well. There is very few railroads will ship a horse without knowing what they are.

Q. State what conversation you had concerning these horses.

A. He was to ship them to St. Louis. The horse- were all out on the platform; Mr. Reavis' horse and mine on the platform; we got the stalls ready for them in the cars; they were to bring the boys along with them; they called us in to sign that paper; I don't know what was in it; he never read it nor I never read it;
69 we both signed it; I partly guessed what it was; that it was a contract. The engineer came in and said, if we did not get the horses out of the depot very soon the train would leave. We shipped them in a hurry, and the freight clerk called us in and we signed the paper.

Q. Did they see the horses before they were shipped?

A. They were looking at them; they knew they were not common horses. There is always 15 to 20 horses in a freight car—common horses. They cannot put more than six race horses in a car, for they have to stand in a stall, each one separately. They generally have a boy—one boy to every horse, and sometimes two to every horse.

Mr. PATTISON: By "they" you mean the owners of the horses?

Mr. STEWART: Who do you mean by "they?"

A. The owner of the horses; the man that ships has so many attendants to the horse—never less that one. The season was
70 pretty well over at that time, and I discharged a part of the men, and sent two in the car to take care of them until they came here.

Q. Who put those stalls in the cars?

A. I think they did; I am not certain; on some occasions we had to do it, but I think they did. I have seen the clerks last year again. I shipped by express to Baltimore, and it was the first time I ever knew the clerks of a railroad company ——

(Objected to.)

THE COURT: Confine yourself to the transaction, Mr. Stewart.

Q. Have you stated all that was said at the time concerning these horses at the time the shipment was made, I mean concerning the character and value of the horses?

A. They knew the value of the horses—the clerks did.

Q. Who suggested this contract, this paper that you signed?

(Objected to.)

THE COURT: I don't thing anything else is material, except what concerned the character and value of the horses.

Q. Have you stated all that was said about the character and

value of the horses at that time? Had they shipped some of
71 the same horses over the same route before?

A. Yes, sir.

Q. Were these the same agents and clerks?

A. The same clerks that were there last fall.

Q. What year was it that this clerk bet on one of the horses?

A. I think it was two years previous.

Q. How do you know that?

(Objected to.)

A. I went in the first time I was there; it was two years previous —1877.

Mr. PATTISON: What clerk was this?

A. I can't tell you; I don't know his name. I knew him just the same as I know you. I can't tell your name now. He was in the office, and seemed to be a very nice, polite gentleman; that's all I've got to say about him. I went to him and asked him what rates he would give me for the four horses; I mentioned the four horses by name; and one time I went in there to ship them to Nashville.

The COURT: I don't think it is competent to prove the shipment of the horses at some other time.

WITNESS: Some of them was the same horse; Reading
72 and Clenny G. was the same.

Q. Any others the same?

A. Yes; there was Charley Howard. I bought Charley Howard the same year. There was three of them the same. When I went to ask the rates he asked me he read the mare's name Clemny G., and he says she won a race at Sarotoga; says he, "Are you Lawrence Hart?" Says I, "Yes, I am." Says he, "Are you the owner of Clenny G.?" Says I, "Yes." Well, says he, "I wish I could give her a palace car." Says I, "I wish you could to-."

Q. How many years have you shipped horses, sir?

A. Four years—race horses; I have shipped common horse for a long time.

Q. Shipped by this line?

A. Yes; four years since I began to ship by this line.

By Mr. PATTISON: Four years, now, you mean?

A. Yes, sir.

By Mr. STEWART: Under the same arrangement?

A. Yes; the same arrangement; I have shipped from pretty near all the depots in the United States, west and north.

Q. Who told you to sign this contract before the horses could be shipped?

73 A. I think it was the shipping clerk. The train was about to back out and take the car out of the depot. He came in and said he has to sign the bill of lading.

Q. What had been said before about the value to be fixed upon the horses in case of injury?

A. Not a word.

Q. Who wrote out what was written in the contract?
A. The shipping clerk.
Q. Did you write anything except your name?
A. I wrote my name in it; that's all.

Cross-examination by Mr. PATTISON, for the defendant:

Q. When was it this man told you about betting on Clenny G.; what year was that?
Q. That was in the fall of 1877; two years before that.
A. All the talk you had with the clerks here in October, 1879, was before you signed this paper?
A. All the talk; yes, sir; they knew me; they had seen me
74 the same as I knew them.

Plaintiff then offered testimony to show the actual value of the horse that was killed, and that she was worth fifteen thousand dollars; and also of the value of the other horses, and that they were worth from three thousand to three thousand and five hundred dollars each, and that they were rendered comparatively worthless in consequence of the injuries received by the accident complained of.

Defendant objected to this testimony, on the ground that it was not competent for the plaintiff to prove any damage or loss in excess of that set out in the bill of lading.

Which objection the court sustained, and the plaintiff then and there duly excepcepted.

It was admitted by the defendant that the damages sustained [by] the plaintiff were equal to the full amount expressed in the bill of lading; and this was all the evidence; and therefore the court charged the jury as follows:

Upon the conclusion of the testimony for plaintiff, the court instructs the jury as follows:

75 GENTLEMEN OF THE JURY: The amount of the recovery of the plaintiff here must be determined by the construction of the contract under which the horses were shipped. It is for the court to construe the writing. It provides that Lawrence Hart, the plaintiff, delivered, to be transported in safe and suitable cars of the Pennsylvania Railroad Company, from Jersey City to St. Louis, Missouri, live stock of the kind mentioned, upon terms which are admitted and accepted by the plaintiff as just and reasonable. The defendant, The Pennsylvania Railroad Company, as common carrier, assumes a liability on the stock to the extent of the following agreed valuation: If horses or mules, not to *to* exceed two hundred dollars each; if for a chartered car, twelve hundred dollars for the car-load. The contract then proceeds to give the values of certain other live stock, which is not necessary to be read.

The court has considered, as well as we could in the brief time we have had, as to what the true construction of that con-
76 tract is, and as to whether it is a valid or a void contract.

It is not necessary that I should go into any discussion of

the question in the charge I give to you. We have reached a conclusion, as you have already learned, that it is competent for a shipper, by entering into a written contract, to stipulate the value of his property, and to limit the amount of his recovery in case it is lost. This is the plain agreement, that the recovery shall not exceed the sum of two hundred dollars each for the horses, or twelve hundred dollars for a car-load. It is admitted here by counsel for the defendant under this charge that the plaintiff is entitled to recover a verdict for twelve hundred dollars, and also, und– the charge of the court, the plaintiff agrees that that is all. It is simply your duty to find a verdict for that amount.

To which charge the plaintiff then and there duly excepted. And thereupon the jury found a verdict for the plaintiff for the sum of twelve hundred dollars; and there was judgment accordingly. To which verdict and judgment under the charge of the
77 court, and to said charge, the plaintiff then and there duly excepted, and now excepts, and files this his bill of exceptions, and asks that the same be signed and sealed, and made part of the record hereof.

Which is done accordingly.

April 9, 1881. GEO. W. McCRARY,
Circuit Judge.

And afterwards, to wit, on the 14th day of April, A. D. 1881, the following further proceedings were had, and appear of record, to wit:

Writ of Error Allowed.

LAWRENCE HART, Plaintiff,
vs.
PENNSYLVANIA RAILROAD COMPANY, Defendant. } 1695.

Now comes the plaintiff, by attorney, and presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said defend-
78 ant to be and appear at a Supreme Court of the United States, at the next term thereof, on the second Monday of October next, which said writ of error is allowed, and said citation signed by the judge; and said plaintiff also presents to the court his bond in the penal sum of five hundred dollars, which said bond is approved, and ordered to be filed.

Which said bond is in the words and figures following, to wit:

79 Know all men by these presents, that we, Lawrence Hart, as principal, and Andrew Parle, as surety, are held and firmly bound unto The Pennsylvania Railroad Company in the full and just sum of five hundred dollars, to be paid to the said Pennsylvania Railroad Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 14th day of April, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas lately, at the March term, 1881, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between Lawrence Hart, plaintiff, and Pennsylvania Railroad Company, defendant, judgment was rendered against the said defendant, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation, directed to the said defendant, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said plaintiff shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make good his plea, then the above obligation shall be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

LAWRENCE HART. [SEAL.]
ANDREW PARLE. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge*.

79½ Endorsed: No. 1695. United States circuit court, eastern district of Missouri. Lawrence Hart *vs.* Penn. R. R. Co. Bond. $8500. L. Hart, principal; Andrew Parle, sureties. Filed 14th day of April, 1881. M. M. Price, clerk.

80 UNITED STATES OF AMERICA, } ss:
Eastern District of Missouri, }

I, M. M. Price, clerk of the circuit court of the United States for the eastern district of Missouri, do hereby certify that the writing hereto attached to be a true transcript of the records and proceedings in case No. 1695, of Lawrence Hart, plaintiff, against The Pennsylvania Railroad Company, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal said court, at office, in the city of St. Louis, in said district, this 6th day of July, in the year of our Lord eighteen hundred and eighty-one.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy*.

Endorsed: No. —. United States circuit court, eastern district of Missouri. —— against ——. Duly certified copy —— in the above-entitled cause.

Endorsed on cover: E. Missouri C. C. U. S. No. 391. Lawrence Hart, plaintiff in error, *vs.* The Pennsylvania Railroad Company. Filed 13th October, 1881.

112-331

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1884.

LAWRENCE HART,
Plaintiff in Error,
vs.
THE PENNSYLVANIA RAILROAD COMPANY.
Defendant in Error.
No. 79.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF CASE AND BRIEF BY PLAINTIFF IN ERROR.

M. C. DAY,
G. M. STEWART,
For Plaintiff in Error.

Nixon-Jones Printing Co., Law Printers, 210 and 212 Pine Street, St. Louis.

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LAWRENCE HART,
Plaintiff in Error,

vs.

THE PENNSYLVANIA RAILROAD COMPANY.
Defendant in Error.

No. 79.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF CASE AND BRIEF BY PLAINTIFF IN ERROR.

This is an action against the defendant, a common carrier for loss and injuries sustained by the plaintiff in consequence of the negligence of the defendant in transporting

five horses from Jersey City, New Jersey, to St. Louis, Missouri.

It appears from the pleadings that on the 23d day of October, 1879, the defendant undertook to carry five horses and some other property belonging to their equipment, from Jersey City to St. Louis, by rail.

The value of the property was about $40,000.

In the course of transit, one of the horses, valued at $15,000, was killed and all the others more or less injured. The total damage is laid at $25,000.

The answer, so far as it is material to the question before this court (pp. 4–5 of record), avers that when it received the horses for transportation, a receipt or bill of lading was delivered to plaintiff, signed by him and by the defendant containing, *among other things*, a provision that the horses were received on behalf of defendant and connecting carriers, whereby in consideration of ninety-four cents per one hundred pounds paid as freight, the defendant assumed a liability on the stock to the extent of not exceeding two hundred dollars for each horse, or if the car was a chartered car not exceeding $1,200 per car load, and it was agreed that the carrier's liability was in no case to exceed the sum above mentioned.

The answer also sets out other conditions of the bill of lading to show its exemption from liability, but they are not deemed material to this issue.

It appeared at the trial from the evidence offered by the plaintiff that plaintiff was the owner of the horses, in October, 1879, and they were race horses, (p. 27) and desiring to ship them to St. Louis he went to the office of defendant's freight agent at Jersey City to make arrangements for their shipment and there saw some of the clerks that had shipped some of them before.

After inquiring the rates of freight at defendant's office the plaintiff proposed to go to the New York Central and Erie offices to try and get better rates and was informed by the person in charge of defendant's office that those roads

were all pooled and that he could not succeed in doing so. Plaintiff made the attempt, however, and verified the correctness of this statement and came back to defendant's office and said (bottom page 27), "There is no use in my going any further."

The shipping clerk of defendant knew some of the horses he was about to ship, for he had shipped them back and forth two or three times (p. 28). He knew "Clemmy G." and "Reading" very well. "He had bet on "Clemmy G." at Saratoga ten years previous to that, and he knew the horse well." Again on page 29 * * * plaintiff says: "When I went to ask the rates, he (meaning the shipping clerk) asked me to read the mare's name "Clemmy G." and he says, 'She won a race at Saratoga.' Says he, 'Are you Lawrence Hart?' Says I, 'Yes, I am.' Says he, 'Are you the owner of "Clemmy G.?"' Says I, 'Yes.' 'Well,' says he, 'I wish I could give her a palace car.'"

This shipping clerk saw all the horses before they were shipped, as they were standing on the platform, and as plaintiff says, (p. 28), "Knew they were not common horses."

"There is always fifteen to twenty horses in a freight car — common horses. They can not put more than six race horses in a car, for they have to stand in a stall each one separately. They generally have a boy, one boy to every horse — sometimes two to every horse." (p. 28.)

Stalls were placed in the cars in which plaintiff's horses were carried so as to accommodate and protect them, and men placed in charge. At this point it was time for the train to move, and the engineer came in and said if they did not get the horses out of the depot very soon the train would leave. The horses were then shipped in a hurry, and the freight clerk called on the plaintiff and asked him to sign the bill of lading and he did so. (p. 28.)

This paper is the receipt, or bill of lading referred to in the answer, and it appears in full at pages 31 and 32 of printed record, and is also set out in *hæc verba* in this statement.

This paper was signed by the plaintiff after the engineer had announced that the train was about to move. It was brought to him by the shipping clerk for his signature and plaintiff signed it without reading it or knowing its contents. Plaintiff says (p. 28): "They called to us to sign that paper. I don't know what was in it; he never read it, nor I never read it. We both signed it. I partly guessed what it was, that it was a contract."

Again at page 29.

"Q. Who told you to sign this contract before the horses could be shipped? A. I think it was the shipping clerk. The train was about to back out and take the car out of the depot. He came in and said, 'We had to sign a bill of lading.'

Q. What had been said before about the value to be fixed upon the horses in case of injury. A. Not a word.

Q. Who wrote out what was written in the contract? A. The shipping clerk.

Q. Did you write anything except your name? A. I wrote my name in it, that's all" (p. 29).

This paper is in the following words: —

BILL OF LADING.

[Form No. 39, N. J.]

LIMITED LIABILITY LIVE-STOCK CONTRACT FOR UNITED RAILROADS OF NEW JERSY DIVISION. No. 206.

JERSEY CITY STATION, P. R. R., ————————, 187–.

Lawrence Hart delivered into safe and suitable cars of the Pennsylvania Railroad Company, numbered M. L. 224, for transportation from Jersey City to St. Louis, Missouri, live stock, of the kind as follows: one (1) car, five horses, shipper's count, which has been received by said Company for themselves and on behalf of connecting carriers, for transportation, upon the following terms and conditions, which are admitted and accepted by me as just and reasonable: —

First. To pay freight thereon to said Company at the rate of ninety-four (94) cents per one hundred pounds (company's weight), and all back

freight and charges paid by them, on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation: —

If horses or mules, not exceeding	$200 00	each
If cattle or cows, " "	75 00	"
If fat hogs or fat calves, not exceeding	15 00	"

If sheep, lambs, stock hogs, or stock calves, not exceeding five dollars each.

If a chartered car, on the stock and contents in same, twelve hundred dollars for the car load.

But no carrier shall be liable for the acts of the animals themselves, or to each other, such as biting, kicking, goring, and smothering, nor for loss or damage arising from condition of the animals themselves, which risks, being beyond the control of the Company, are hereby assumed by the owner, and the carrier released therefrom.

Second. Upon the arrival of the cars or boats containing said stock at point of destination, the shipper, owner or consignee shall forthwith pay said freights and charges, and receive said stock therein, and unload the same therefrom; and if, from any cause, he or they shall fail or refuse to pay, receive or unload, as aforesaid, then said Company or other carrier, as the agent of such shipper, owner or consignee, may thereupon have them put and provided for in some suitable place, at the cost and risk of such shipper, owner, or consignee, and at any time or times thereafter may sell the same, or any number of them, at public or private sale, with or without notice, as said agent may deem necessary or expedient, and apply the proceeds arising therefrom, or so much thereof as may be needed, to the payment of such freight and charges and other necessary and proper costs and expenses.

Third. When necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier or carriers for transportation, upon such terms and conditions as the carrier may be willing to accept; provided that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate, but in no event shall one carrier be liable for the negligence of another.

Fourth. All live stock transported under this contract shall be subject to a lien, and may be retained and sold for all freight or charges due for transportation on other live stock or property transported for the same owner, shipper or consignee.

Fifth. This Company's liability is limited to the transportation of said animals, and shall not begin until they shall be loaded on board the boats or cars of the Company. The owner of said animals, or some person appointed by him, shall go with and take all requisite care of the said

animals during their transportation and delivery, and any omission to comply herewith, shall be at the owner's risk.

Witness my hand and seal this 20th day of October, 1879.

LAWRENCE HART, *Shipper*. [L. S.]

Attest:
E. BUTTER.
W. J. CHARMERS,
Company's Agent.

With the car containing the horses, the defendant's train left Jersey City on Monday evening, and on Thursday evening about 5 o'clock it left Newark, Ohio, going west (p. 10 of Record), and when at or near a station called Black Lick (p. 18) the train was about three-fourths of an hour behind time (p. 19), and the right of way was due to train No. 17 going east (p. 18).

The conductor of the train told the brakeman who was at the rear end that it would have to take the side-track at that point, and brakes were accordingly put on with the intention of stopping the train to take the siding. The engineer whistled off brakes, the train parting in three (3) sections, causing the middle section to run into the first section of the train, and the car in which the plaintiff's horses were was badly smashed up. It was the third section of No. 12, west bound, and was in charge of the conductor (p. 18).

The train was broken by the engineer in applying steam when the brakes were set behind (p. 20) by the sudden jerk (p. 11). The point where the train parted was on the top of a hill or heavy grade; there were 31 cars on the train, and after it parted there were 7 cars in the forward section attached to the engine, 9 cars on the middle section and 15 on the rear section (p. 23). There was no brakeman on the middle section after the train parted (p. 23). After the train parted, the engine with the cars attached moved on for some distance to or near the foot of the hill at Black Lick Station, and stopped and waited for the other sections to come up (p. 10). The forward car of the mid-

dle section of the broken train contained plaintiff's horses and his men in charge of them. Having no brakeman, and moving down the grade, it acquired such velocity or "turn of speed" that when it struck the rear car of the section to which the engine was attached, and which was standing at the foot of the hill, it was smashed in pieces, and also four other cars of that section were broken (p. 10). The result of this was that all of plaintiff's horses were more or less injured, and the most valuable one, Bonnie Carrie, soon after died of her injuries.

In addition to the foregoing testimony, the plaintiff offered evidence, tending to prove that the value of the horse which was killed was fifteen thousand dollars, and also that the horses which were injured were worth at least three thousand dollars each, and that they were rendered comparatively worthless in consequence of the injuries they had received. The defendant objected to this evidence on the ground that is was not competent for the plaintiff to prove any damage or loss in excess of that set out in the bill of lading, and the Court sustained the objection, and the plaintiff duly excepted to the ruling of the Court (p. 30).

This was all the evidence offered by the plaintiff.

The defendant offered no evidence, but at the close of the plaintiff's case admitted that the damages sustained by the plaintiff were equal to the full amount expressed in the bill of lading (p. 30).

Thereupon the Court instructed to jury as follows: —

Gentlemen of the Jury: The amount of the recovery of the plaintiff here must be determined by the construction of the contract under which the horses were shipped. It is for the Court to construe the writing. It provides that Lawrence Hart, the plaintiff, delivered, to be transported in safe and suitable cars of the Pennsylvania Railroad Company, from Jersey City to St. Louis, Missouri, live stock of the kind mentioned, upon terms which are admitted and accepted by the plaintiff as just and reasonable. The defendant, the Pennsylvania Railroad Company, as common carrier, assumes a liability on the stock to the extent of the following agreed valuation: If horses or mules, not to exceed two hundred dollars each; if for a chartered car, twelve hundred dollars for the

car load. The contract then proceeds to give the value of certain other live stock, which is not necessary to be read.

The Court has considered, as well as we could in the brief time we have had, as to what the true construction of that contract is, and as to whether it is a valid or a void contract.

It is not necessary that I should go into any discussion of the question in the charge I give you. We have reached a conclusion, as you have already learned, that it is competent for a shipper, by entering into a written contract, to stipulate the value of his property and to limit the amount of his recovery in case it is lost.

This is the plain agreement, that the recovery shall not exceed two hundred dollars each for the horses, or twelve hundred dollars for a car load. It is admitted here by counsel for the defendant under this charge that the plaintiff is entitled to recover a verdict for twelve hundred dollars, and also under the charge of the Court, the plaintiff agrees that this is all. It is simply your duty to find a verdict for that amount. The jury found a verdict for $1,200, and judgment was entered accordingly.

To this charge the plaintiff excepted *in toto*, and in due time prosecuted his writ of error to this court.

ASSIGNMENT OF ERRORS.

First. The court erred in refusing to permit plaintiff to introduce evidence tending to show the actual damage sustained by him (page 30.)

Second. The court erred in so charging the jury as to restrict their verdict to twelve hundred dollars. (pp. 30–31.)

While the two errors as assigned necessarily arise from the record, it is manifest that the same question is involved and the same error arises in each, and hence they may be discussed together.

The charge to the jury, which is the ground of the second assignment, is only a repetition of the error complained of in excluding the testimony as to extent of the injury, and a more elaborate and exact statement of the views entertained by the court in refusing the testimony.

The case here turns upon the propriety of the ruling of the court on this question.

The court below held that the bill of lading or the paper signed by the plaintiff is a contract, the legal effect of which is such that plaintiff can not recover more than the amounts stated therein, notwithstanding the loss was largely in excess of that amount and was occasioned by the negligence of the defendant.

BRIEF AND ARGUMENT.

I.

The bill of lading does not purport to limit the liability of the carrier to the amounts stated therein in the event of loss through its negligence. The paper upon its face shows that it is the form which the defendant had prepared for use in all similar cases of shipment and was not made out in pursuance of any specific agreement made by the parties in this case. In other words the terms named in this agreement are the same as those upon which all shipments of this character were made by defendant, and the shipper had no alternative but to accept them or not ship At least, it does not appear from the answer that the defendant charged any other rates, or made any other terms with the shipper in such cases, or that it made any other proposition with respect to this shipment, and there is no evidence tending to show any such facts.

The portion of this contract material in this argument is as follows: —

BILL OF LADING.

[Form No. 39, N. J.]

LIMITED LIABILITY LIVE-STOCK CONTRACT FOR UNITED RAILROADS OF NEW JERSEY DIVISION, NO. 206.

JERSEY CITY STATION, P. R. R.
—— ——, 187–.

Lawrence Hart delivered into safe and suitable cars of the Pennsylvania Railroad Company, numbered M. L., 224, for transportation from Jersey City to St. Louis, Mo., live stock of the kind as follows: —

One (1) car five horses, shipper's count, which has been received by said company for themselves, and on behalf of connecting carriers for transportation upon the following terms and conditions, which are admitted and accepted by me as just and reasonable.

First, to pay freight thereon to said company at the rate of ninety-four (94) cents per one hundred ponnds (company's weight), and all back freight and charges paid by them, on the condition that the carrier assumes a liability on the stock to the extent of the following agreed valuation: —

If horses or mules, not exceeding two hundred dollars each.
If cattle or cows, not exceeding seventy-five dollars each.
If fat hogs or fat calves, not exceeding fifteen dollars each.
If sheep, lambs, stock hogs, or stock calves, not exceeding five dollars each.
If a chartered car, on the stock and contents in same, twelve hundred dollars on each car load." * * *

Now the following facts appear from the record and they are not contradicted: —

(*a.*) The property shipped was of much greater value than that named in the printed form of contract. (p. 30.)

(*b.*) That the carrier or its authorized agents knew this before it received the stock for shipment. (pp. 28–29.)

(*c.*) That the plaintiff was not asked the value of the property by the carrier when he signed the contract nor had there been any valuation fixed upon the property or anything said about fixing a value upon it by the parties, when the plaintiff signed the contract or bill of landing.

(*d.*) That the injury was caused solely by the negligence of the defendant and that it was *gross* indeed, if degrees are to be fixed in such cases.

The contention of the defendant is that while the bill of lading does not attempt to release it from liability in the event of a loss through its negligence, yet if such a loss does occur, the extent of its liability is fixed by this bill of lading, and this was the view of the court below.

The record discloses that the terms named in this bill of lading were the only terms offered by the defendant. No other tariff was required by it for any other valuation, nor

shipper, containing the stipulation which limited the liability of the defendant to one hundred dollars in consideration of the rate charged for transportation. The agreement provided among other things, that in consideration of the reduced rates the shipper would assume certain risks, and it also provided for passing the person in charge of the horse; that the horse was to be carried at the owner's risk, and his value, if injured or killed, was $100.

The court held that inasmuch as the shipper fixed the value upon the horse and secured a rate of freight based upon that valuation and other considerations, he could not recover more than one hundred dollars in case of loss.

Inasmuch as the majority of the court held that plaintiff was not entitled to maintain the action, the value of this decision may admit of serious consideration.

The case presented by this record, however, is wanting the essential elements which was the ground work of those decisions.

Here no representation of value was required; no deception or misleading statement of value was made, and the shipper knew the value of the property it was to carry, or knew that it was greatly in excess of the sums named in the bill of lading.

In Jones *v.* Voorhis, 10 Ohio, 145, it was held that "however valuable an article of baggage may be, it seems now to be well settled by the authorities that the owner is not bound to disclose such peculiar value to the carrier, unless inquiry be made. If the carrier make no inquiry, and no artifice is made use of to mislead him, he is answerable for the loss, however great the value may be."

Jones on Bailment, 105;
2 Kent Com. 463.

A common carrier may limit its liability by agreement so as to become liable only as a private carrier; may cease to

sustain liability as insurer or for damage not directly flowing from its own negligence.

Farnham *v.* Ry. Co., 55 Pa. St. 53;
Express Co. *v.* Sands, 55 Pa. St. 140;
Navigation Co. *v.* Bank, 6 How. 344.
Oppenhimer *v.* Ex. Co., 69 Ill- 62.

Such exemptions, however, must be clearly and explicitly stated in the contract and not left for inference.

Southern Ex. Co. *v.* Moon, 39 Miss. 882;
Maginn *v.* Dinsmon, 56 N. Y. 168.

The last named case goes very far in permitting carriers to exempt themselves from their own negligence and holds that a common carrier may limit its liability for its own negligence, gross or otherwise, by special contract, but that such limitation is not to be inferred from the contract unless explicitly stipulated. The contract must expressly state negligence as one of the things contracted against.

In the absence of such specific agreement, however, none of the cases hold that the carrier can escape liability for its own negligence.

In Sager *v.* Ry. Co., 31 Maine, 228, the plaintiff had signed the following paper: —

"We, the undersigned hereby, agree to exonerate the (Railway Company) from all damages that may happen to any horses, oxen, or other live stock that we send or may send over said Company's railroad; meaning by this, that we take the risk upon ourselves of all and any damages that may happen to our horses, cattle, etc., and that we will not call upon said railroad company or any of their agents for any damage whatever."

The court held that the railroad company was not exempt from damages caused by the negligence, misfeasance, or malfeasance of its servants and that the Company was liable under such a contract for injuries sustained to a horse shipped in an open car, when the shipper directed that he be shipped in a close car.

Southern Ex. Co. *v.* Moon (39 Miss. 882), holds that when a contract is made with the shipper by the carrier limiting its liability to a fixed amount of damage, it does not exonerate the carrier from his own negligence. The court says (p. 832): —

"When, as in the case of carriers, a public duty is imposed by law and it is sought by special agreement to avoid that duty, no *implication* can be indulged to support such an agreement, but an actual contract assented to in fact by both parties must be shown" (833). "If, therefore, it were even admitted that the record shows that there was a special agreement, fully understood and assented to by the owner, upon a sufficient consideration limiting the carrier's liability to fifty dollars, such *agreement* would be no defense in this action when the ground of recovery relied on is the negligence of the carrier."

Chicago, etc., Ry. *v.* Abels (60 Miss. 1017), decides that under a special contract between the shipper and the carrier of the stock (page 1022): —

"A common carrier may, by special contract, stipulate for exemption from the liability imposed by the common law, but may not thus secure exemption from the consequences of negligence or misconduct."

Again at page 1023: —

"The Court did right to refuse to instruct the jury that the limit of the plaintiff's right of recovery was $100. The contract contains a stipulation that should damages occur, the value at the place and date of shipment shall govern the settlement, in which the amount of recovery claimed shall not exceed * * * for a horse or mule $100. * * * The evidence showed the mule would have been worth $140 or more, etc. * * * If in fault, the carrier should make compensation by paying the damage done and should not be allowed to stipulate in advance for a diminished liability below the real loss sustained by the fault which creates the liability. To allow that would defeat the politic rule against stipulating for exemption from the consequences of negligence or misconduct."

In Railway Co. *v.* Simpson, 30 Kansas, 645, the question arose under the following circumstances: William Tanner, the agent of Simpson was directed to ship a race horse from East Atchison, Kansas, to St. Joseph, Missouri. The

railroad company required the following contract to be signed by Tanner before it received the horse for shipment: —

"Received of William Tanner, one horse to be delivered at St. Jo Station at special rates, being $— per car, back charges $—. In consideration of which and for other valuable consideration, it is hereby and mutually agreed that the said company shall not be liable for loss by jumping from the cars, delay of trains from any causes, or any damage said property may sustain, except such as may result from a collision of the train, or when cars are thrown from the track in course of transportation. Nor will this company be responsible in any case for any loss or damage which may arise after said stock or property is delivered at the point on its line where it is consigned by this contract, or where it is to be turned over to any other company or boat for further transportation to its destination. Value not to exceed $100."

It was so signed and the horse shipped. At St. Joseph the car containing the horse was run up in the yard of the company, a flying switch made, and the car run about two hundred yards without any brakeman or other person on it to stop or control it, at such a speed that the horse was knocked down upon his knees and injured.

In answer to an action for damages on account of this injury the defendant pleaded: —

"That it was induced to carry and deliver the horses at the price of $4.00 only by reason of a contract that the risk in case of injury thereto should not exceed $100, and that in no case would a breach of its contract make its liability exceed that sum."

The jury found a verdict for $250, and a writ of error was prosecuted. In deciding the case and holding that the carrier could not thus limit its liability against its negligence in transporting the horse, the court quotes extensively from the language employed by this court in its decision in case of Railroad Company *v.* Lockwood, *supra*, and applies it to that case, and later in the opinion uses the following language: —

"While the provision in a bill of lading or contract between the shipper and carrier, that the latter will not be liable beyond a certain sum

expressed in the contract, may be valid to limit the liability of the carrier as an insurer, a condition of this character which seeks to cover the negligence of the carrier is void, therefore, the direction of the trial Court was not erroneous. The present case furnished a strong illustration of the oppression and injustice of a contrary doctrine."

A late case decided by the Supreme Court of Minnesota, Moulton *v.* Ry. Co., 31 Minn. 85, and reported in the 16 N. W. Rep. 497, has so many features in common with the case now before the court, and is so fully and ably discussed, that we have quoted liberally from the opinion.

In that case it appeared that the plaintiff shipped ten car loads of horses at St. Paul, over defendant's line of road, to points in Dakota. Two of the horses died by reason of prolonged exposure to cold weather, as was claimed, caused by defendant's negligent detention of the train during transportation. The action was for the recovery of the value of these two horses, which appears to have been $200 each.

Quoting from the opinion, p. 87; —

"The contract under which the property was shipped, and which was executed by both plaintiffs and defendant, contained the provisions that in consideration that the defendant would transport the property at the rate of $75 per car load, the same being a rate given, subject to the conditions of this contract, the plaintiffs released the defendant from the liability of a common carrier, and from any liability for any delay in shipping the stock after its delivery to the defendant, and agreed that the liability of the defendant should be only that of a private carrier for hire. The plaintiffs contracted to assume all risk of damage which might be sustained by reason of any delay in transportation, and all risk of damage from any other cause, not resulting from the willful negligence of the agents of the defendant. It was further agreed that in case of total loss, the damage should in no case exceed the sum of one hundred dollars per head, and in case of partial loss, damage should be measured in the same proportion. A printed 'regulation' of the defendant attached to the contract, provided that the defendant would not assume any liability in excess of $100 per head on horses and valuable live stock, except by special agreement. By the contract of the parties the owner of the horses attended and cared for them upon the passage without extra charge for his own transportation." * * *

"A railroad company which undertakes to transport live stock for hire for such persons as choose to employ it, assumes the relations of a

common carrier, and becomes chargeable with the duties and obligations which are incident to that relation."

Kimball *v.* Ry., 26 Vt. 247;
Rexford *v.* Smith, 52 N. H. 355;
Clam *v.* Ry., 14 N. Y. 570;
Evans *v.* Ry. Co., 111 Mass. 142;
Ry. Co. *v.* Dorman, 72 Ill. 504;
Rowell *v.* Pa. Ry., 32 Pa. St. 414;
G. W. Ry. *v.* Hawkins, 18 Mich. 427–433.

"* * * The law has been determined in this State, and in most of the United States, as well as in the Federal Supreme Court, to be that a common carrier of goods can not by contract relieve himself from liability for his own negligence."

Christensen *v.* Ex. Co., 15 Minn. 270;
Shriver *v.* Ry. Co., 14 Minn. 506;
Ry. Co. *v.* Lockwood, 17 Wall. 357;
Muser *v.* Holland, 17 Blatch. 412.
Bank of Ky. *v.* Ex. Co., 93 U. S. 174.

"Nor is there any reason why a different rule should prevail in respect to the transportation of live stock, or of property under care of the owner."

"The agreement discharging the defendant from the liability of a common carrier can not avail to divest the carrier of his real character, nor indirectly release him from responsibilities from which he can not directly by contract free himself."

Christensen *v.* Ex. Co., *supra;*
Bank *v.* Ex. Co., *supra.*

"The same reasons which forbid that a common carrier should, even by express contract, be absolved from liability for his own negligence, stand also in the way of any arbitrary preadjustment of the measure of damages, whereby the carrier is *partially* relieved from such liability. It would indeed be absurd to say that the requirement of the law as to such responsibility of the carrier is absolute, and can not be laid aside, even by the agreement of the parties, but *that one-half or three-fourths of this burden which the law compells the carrier to bear, may be laid aside, by means of a contract limiting the recovery of damages to one-half or one-fourth of the known value of the property.* This would be a mere evasion, which would not be tolerated. Yet there is no reason why the contract-

ing parties may not in good faith agree upon the value of the property presented for transportation, or fairly liquidate the damages recoverable in accordance with the approved value. Such an agreement would not be an abrogation of the requirements of the law, but only the application of the law as it is, by the parties themselves to the circumstances of the particular case. But that the requirements of the law may not be evaded and its purposes frustrated, contracts of this kind should be closely scrutinized.

"Upon the face of the contract under consideration, it is apparent that it was not the purpose of the parties to liquidate the damages recoverable with reference to the *value* of the property consigned to the carrier. Its provisions are somewhat contradictory and not easily reconciled. The general regulation attached to the contract to the effect that the company will not assume any liability over one hundred dollars per head on horses and valuable live stock except by special agreement, is plainly opposed to the law as established so far as regards the negligence of the carrier. As a regulation, it is, therefore, of no effect. The law declares the carrier *shall* be liable to the extent of the value of the property, although there be no special agreement.

"We do not question the right of the carrier to require the disclosure by the consignor of the value of the property presented for transportation, when its value is not apparent and well known. This is reasonable both to this end that proper care may be taken of the property while it is in the hands of the carrier, and because the proper charges for transportation may often depend largely upon value. We see nothing, however, in this contract which can be regarded as having been intended as calling for such a disclosure on the part of the plaintiffs or as estopping them from claiming a recovery upon the ground of the carrier's negligence of the actual value of the horses. In terms, the contract purports to relieve the defendant from liability, even for its own negligence, and at the same time, if a recovery shall be had notwithstanding this agreement, then the amount of such recovery is limited to the sum of $100 per head. These stipulations can not naturally be applied to a case involving as the cause of action the negligence of the carrier without making them in effect, to be an agreement in the first place for absolute exemption from liability (except for willful negligence); and if, notwithstanding the agreed exemption, a recovery should be awarded, it shall not exceed the sum named; that is to say (as applied to a case of negligence), it is, in effect, an agreement for absolute exemption, and that failing to be sustained, then for a *partial* exemption from the liability which the law imposes in such cases, and which can not be laid aside by the mere consent of parties. Such a contract can not be sustained."

In the Steamboat City of Norwich, 4 Ben. 271, the question was whether the condition in a receipt or bill of lading that "no package if lost, damaged, or stolen, to be deemed

of greater value than $100, unless specifically receipted for at a greater valuation," could be effective to limit the amount of the recovery in the action. The loss was occasioned by the negligence of the defendant carrier.

Inter alia the court said: —

"To permit carriers to fix a *limitation* to the amount of their liabilities for their own negligence, is in effect to permit them to exempt themselves from such liability. Every consideration of public policy which applies in the one case seems equally applicable in the other."

The question is again fully discussed in Black *v.* Transportation Co., 55 Wis. 319. In that case, the carrier attempted to limit its liability to $20 per barrel for whisky on account of a receipt given, fixing that as the extent of its liability. The value of the whisky lost by the carrier was in excess of that amount.

After a full discussion of the cases in this and other courts respecting the power of a common carrier to limit its liability, and stating the present condition of that doctrine the court uses the following language: —

"Admitting that the respondent must be charged with knowledge of the words stamped upon the face of the receipt given to him for the barrel of whisky, and to have assented to any limitation of liability which they fairly secure to the appellant, we are clearly of the opinion that they do not relieve the transportation company from liability to the full amount of the whisky, if the same were lost through the negligence or carelessness of the company, its agents or servants. The courts all seem to hold that a carrier will not be held to have limited his liability against his own or his agent's negligence, unless his contract expressly so provides. In interpreting his contract it will not be so construed except upon the plain language of the contract. If the words stamped upon this contract can be contrued into a contract to limit the liability of the appellant to the sum of twenty dollars, in case of loss, it must be construed as to limit such liability only in case of loss without the fault of the appellant, his agents or servants. This was so held in the case of Westcott *v.* Fargo, 61 N. Y. 543."

See, also, Levering *v.* Union, etc. Co., 42 Mo. 88;
Kallman *v.* Ex. Co., 3 Kas. 205;
Newburger *v.* Ex. Co., 6 Phila. 174;
Levy *v.* Ex. Co., 4 S. C. 234;
Ry. Co. *v.* Henlein, 52 Ala. 606-615.

From the cases cited, therefore, it is conclusively established that the agreement under which the plaintiff's stock was shipped does not exempt the carrier from liability when a loss occurs from its own negligence.

The record shows not only no concealment of the value of the property on the part of the plaintiff, but it clearly discloses that the defendant knew it was particularly valuable property when it was received for shipment. The shipper did not claim to have different rates of charges for carrying such freight proportioned to its value, nor as in Manchester Ry. *v.* Brown, 18 Rep. 319 (50 L. T. R., New Series, 281), did it have a lower rate for parties willing to relieve it from liability for loss, either partial or *in toto*, and a higher rate for those who held it to its full liability, while it does appear *prima facie* that the bill of lading relied on was the one employed in all such cases, and that it was signed as a matter of necessity to secure the shipment under such circumstances.

It is not to be assumed that the amount of fifty dollars was put into it with any special reference to the property in question as the result of any estimate of its value. On the contrary, it must be assumed to have been placed there in conformity to some general regulation of the Company by which their liability was to be limited in all cases, in the absence of special circumstances, or of the payment of a special rate covering insurance to a larger amount.

Levy *v.* Ex. Co., 4 S. C. 234;
Moulton *v.* Ry. Co., 31 Minn. 85.

Such an agreement fixing the extent of the liability so extremely disproportionate to the value of the property is unjust and will not be upheld.

Express Co. *v.* Caldwell, 21 Wall. 264;
Ry. Co. *v.* Henlien, 52 Ala. 606–615;
Railway *v.* Simpson, 30 Kas. 645.

NEGLIGENCE.

That the loss was occasioned by the negligence of defendant's agents does not admit of serious discussion.

The conductor who had charge of the train undertook to run it on a side track at or near Black Lick station in Ohio, and to do this, caused the brakes to be applied. The engineer, for reasons of his own, did not heed this signal, but applied steam, and by "jerking" the train broke it in three parts. This was at the top of a heavy grade. After the train was thus parted the engineer took the cars that remain attached the engine down to the foot of the grade and stopped. The middle section, left without any brakeman, run down the grade with such velocity as to smash up at least four cars by its contact with the cars that were standing, and the car to come in contact with the standing cars contained plaintiff's horses. Whether this was negligence, pure and simple, or whether it was stupidity, or whether it was willful or purely reckless misconduct, is immaterial. The facts as related by the conductor himself, in the record, show negligence and they should have been submitted to the jury under proper instructions.

It follows, therefore, that the court erred in rejecting the testimony offered by plaintiff and in its instructions to the jury, and the judgment should be reversed and the cause remanded.

M. C. DAY,
G. M. STEWART,
For Plaintiff in Error.

NO. 79.

IN THE SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1884.

LAWRENCE HART

vs.

PENNSYLVANIA RAILROAD COMPANY.

ERROR TO THE CIRCUIT COURT, EASTERN DISTRICT OF MISSOURI.

STATEMENT, POINTS AND BRIEF OF DEFENDANT IN ERROR.

PATTISON & CRANE,
Attorneys for Defendant in Error.

Commercial Printing Company, 405 North Third Street, St. Louis, Mo.

In the Supreme Court of the United States.

LAWRENCE HART

vs.

PENNSYLVANIA RAILROAD CO.

ERROR TO THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF MISSOURI.

STATEMENT OF DEFENDANT IN ERROR.

The plaintiff in error brought this action to recover damages to the amount of $25,000, alleged to have been sustained by reason of the death of one horse and injuries to others, while said horses were in the custody of defendant in error as a common carrier. Plaintiff alleged that defendant was a common carrier from Jersey City to St. Louis; that it agreed to transport the horses from Jersey City to St. Louis, and that the injuries happened through defendant's negligence, and that the horses were worth $40,000.

Defendant for answer denied that it was a common carrier between Jersey City and St. Louis, but averred that it was a railroad corporation, and that the termini

of its road were Jersey City on the east and Pittsburgh on the west, and that its road did not extend west of Pittsburgh, nor was it a carrier to any point west of that city.

For further answer, it alleged that the horses were received under a special contract which was signed and sealed by plaintiff in error. The terms and conditions of said contract were admitted by plaintiff to be just and reasonable, and were as follows:

1. That the horses were received by defendant for itself and in behalf of connecting carriers, plaintiff agreeing to pay 94 cents a hundred pounds on condition that the carrier assumed a liability to the extent of the following agreed valuation, to-wit:

If the car was a chartered car, on the stock and contents in same $1,200 for the car load.

2. That if it were necessary for the horses to be transported over the lines of other carriers to reach their destination, they might be delivered to such other carriers for transportation, and defendant was not to be liable for the negligence of any other carrier.

3. The owner of the horses, or some one appointed by him, should go with and take care of the animals during their transportation.

The answer further alleged that defendant received the horses at Jersey City, and carried them safely to Pittsburgh, the western terminus of its road, and there delivered them safely and in the same condition as received to the Pittsburgh, Cincinnati and St. Louis Railroad Company for further transportation. Defendant denied all negligence on its part, and also denied all the other allegations of the petition not expressly admitted; and averred that if any injury happened on the Pittsburgh, Cincinnati and St. Louis Road, defendant was not liable therefor.

To this answer a replication was filed.

The evidence of plaintiff in the court below showed that the horses were shipped under a written contract, under the hand and seal of plaintiff, containing the stipulations which have been set out in substance above (Record, fol. 62-65; Printed Record, p. 25); that they were accompanied by a man and boy, appointed by and representing the owner, and who had charge of the horses and property (Record, fol. 21, 36; Printed Record, p. 9, 15); that at Pittsburgh the horses were transferred to another road (Record, fol. 22; Printed Record, p. 10), to-wit: the Pittsburgh, Cincinnati and St. Louis R. R. (Record, fol. 44, 51; Printed Record, pp. 18, 21), and that it was on this latter road that the accident occurred (*Ibid*). No evidence was introduced tending to show that defendant was a carrier to any point west of Pittsburgh; nor was there any evidence that any officer or agent of the company authorized to make contracts knew that these horses were anything more than ordinary horses; much less that they exceeded in value two hundred dollars a piece. It is not stated in the contract, nor is it alleged in the petition, that the horses were race horses; but that fact cropped out in the evidence.

To prove negligence on the part of the carrier, plaintiff introduced the following evidence:

When the train was at Kirkersville, a station on the Pittsburgh, Cincinnati and St. Louis Railroad, the conductor compared his watch with those of the operator there and the engineer of his train, and all three watches agreed. Leaving Kirkersville they ran west for Big Walnut, where there was a siding at which they were to pass another train, being train No. 17. When they reached Black Lick, a siding east of Big Walnut, the conductor looked at the time, and saw that by his watch they would not have time to make Big Walnut before No. 17 left.

It seems that after leaving Kirkersville the hair spring of the conductor's watch got caught on the regulating post, which caused it to gain time rapidly, so that when the train reached Black Lick the watch was already ten minutes fast. By the correct time as shown by the engineer's watch there was ample time to reach Big Walnut. But the conductor, naturally supposing after the recent comparison that the engineer's watch agreed with his, and assuming that the engineer, knowing there would not be time to make Big Walnut, would head into the siding at Black Lick, ordered the brakeman to apply the brakes so as to steady the train preparatory to taking the siding. The engineer, whose watch was correct, did not understand the move, applied steam and the train parted, breaking into three pieces. There were 31 cars in the train.

The break in the train occurred at a little after seven o'clock of the night of the 23d of October, an hour when it was entirely dark. There were, as is usual on freight trains, two brakemen on this train—one on the forward end, and the other on the hind end, but none on the cars which after the parting of the train composed the middle section. As soon as the train parted the brakeman on the hind end applied the brakes and stopped the rear section. The engineer, supposably not being able on account of the darkness to see that there was a middle section free and running down onto him, but seeing by the lights on the last car that the rear end of the train had been stopped, brought the engine to a stand-still. Then the middle section crashed into the first section, and the car containing plaintiff's horses was broken to pieces (Record, fol. 44-47; Printed Record, pp. 18-19).

The conductor's watch was a Rockford watch, which he had carried for 18 months before the accident, and which he had carried subsequently up to the time his

testimony was taken, and which had always kept correct time except on the occasion of the accident (Record, fol. 48; Printed Record, p. 20).

Defendant below admitted that plaintiff had suffered damage to the amount mentioned in the contract, and objected to any evidence tending to show any greater damage. This objection the Court below sustained. At the close of plaintiff's case, and without receiving defendant's evidence, the Court charged the jury that the amount of the recovery must be determined by the construction of the contract under which the horses were shipped, and it was for the Court to construe the writing. The Court then read the substance of the contract, and charged that it is competent for a shipper, by entering into a written contract, to stipulate the value of his property, and to limit the amount of his recovery in case of its loss; that the agreement was a plain one that the recovery should not exceed $1,200 per car load; that it was admitted by counsel for defendant that plaintiff was entitled to a verdict for $1,200, and by plaintiff that, under the charge of the Court, that was all; that it was the duty of the jury to find a verdict for that amount.

Plaintiff excepted to this charge as a whole. A verdict was rendered in favor of plaintiff for $1,200, and he brings the case here by writ of error.

POINTS.

I. Plaintiff in error is bound by the valuation placed by himself on the property.

II. The burden of proving negligence was on the plaintiff in error, and the facts shown by him do not make a *prima facie* case of negligence.

III. No exception was taken to any particular proposition of the charge, but the exception taken was to the charge as a whole.

IV. If either party has occasion to complain of the verdict, it is the defendant in error, for the evidence introduced by plaintiff in error would have warranted a verdict for defendant.

BRIEF.

I. Plaintiff in error is bound by the valuation placed by himself on the property.

1. The carrier is entitled to correct information as to the value of the goods delivered to him for transportation, both that he may know what degree of care is requisite in their carriage, and that he may be enabled to fix an adequate compensation for the risks incurred, including among such risks possible negligence upon the part of his employees. This doctrine has received the sanction of the Federal Courts, and of most of the State Courts, as well as of text writers.

Railroad Co. vs. *Lockwood*, 17 Wall., 357;
Railroad Co. vs. *Fraloff*, 100 U. S., 24;
Muser vs. *Holland*, 17 Blatchf., 412;
Lawson on Car. Cont., § 20;
Dunlap vs. *Steamboat Co.*, 98 Mass., 371;
Squire vs. *Railroad Co.*, id., 239;
Graves vs. *Railroad Co.*, recently decided by the Massachusetts Court, and reported in 17 Reporter, 623;
Batson vs. *Donovan*, 4 Barn. & Ald., 21;
Little vs. *Railroad Co.*, 66 Me., 239;
2 Kent's Comm. (12 Ed.), *603;
Southern Express Co. vs. *Everett*, 37 Ga., 688; affirmed, 46 Ga., 303;
American Express Co. vs. *Perkins*, 42 Ill., 458;
Addison on Torts (Wood's Ed., 1876), § 703, pp. 773-4;
South & North Alabama R. R. Co. vs. *Henlein*, 52 Ala., 606; affirmed, 56 Ala., 368;
Relf vs. *Rapp*, 3 W. & S., 21;
Elkins vs. *Transportation Co.*, 81 Pa. St. (32 P. F. Smith), 315.

In the *Lockwood* case this Court, speaking of the limitation of liability by carriers, says: "It was just and reasonable that they should not be chargeable for money or other valuable articles liable to be stolen or damaged, unless apprised of their character or value." (17 Wall., p. 380.)

In *Dunlap* vs. *Steamboat Co.* (*supra*), Bigelow, C. J., says: "Inasmuch as the care to be exercised in the transportation of property, and the reasonable compensation for its carriage, must necessarily depend on its nature and value, it is the duty of every person who enters into a contract with a carrier to make use of no fraud or artifice to deceive or mislead him so that the risk which he intends to assume may be increased, or his care and diligence may be lessened in consequence of deception or concealment practiced upon him. If any such fraud or unfair concealment is made use of, the effect is, in case of loss, that the owner can recover only such sum as would be equivalent to the value of the property, if it had been such as it was represented to be by him, or as the carrier might have reasonably supposed it to be, if no deceit or misrepresentation concerning it had been practiced when the contract was entered into." If he is deceived as to the value, "he thereby is misled both as to the amount of compensation which he ought to receive, and as to the nature and degree of care which he ought to use in transporting the property." (p. 376-7.)

It was held by the same Court, Gray, J. delivering the opinion, that a stipulation that the carrier "should not, under any circumstances, be held liable beyond the sum of two hundred dollars for injury to or loss of any single animal was a proper and lawful mode of securing a due proportion between the amount for which they might be responsible and the freight which they received, and of

protecting themselves against extravagant and fanciful valuations." *Squire* vs. *Railroad Co.*, 98 Mass., 239, 245.

In the case of *Batson* vs. *Donovan*, Best, J., though dissenting from the conclusion of the majority, expressly assents to the principle in question. He says: "To entitle the carrier to make a proper charge for the carriage, he is entitled to ask of the owner what is the value of the parcel." (p. 28.) And he adds: "If the answer to inquiries represents the contents of a package as of less value than they are, the carrier will not be liable for more than the value stated by the owner." (p. 29.) It has been held under the English statute that "if the value of horses has been declared at the time of delivery of the animals to a railway company to be carried, and the contract between the parties has been made upon that basis, the plaintiff is bound by his declaration of value, and cannot recover beyond the declared value." (Addison on Torts [Wood's Ed.], Sec. 703, p. 773, and cases cited.) And even in case of negligence by the carrier, he is not liable for any extraordinary or unusual value which may have been accidentally imparted, and which could not from the apparent nature and general character and appearance of the thing be fairly presumed to exist. (*Ibid.*, p. 774.)

In the case at bar the horses looked like other horses, but possessed an alleged value as racers—a concealed value.

The Alabama case decides that where the intent of the valuation is to adjust the measure of liability to the rate and to protect the carrier against exaggerated or fanciful valuations, it is not unjust or unreasonable.

South & North Alabama Railroad vs. *Henlein*, 52 Ala., 606; affirmed, 56 Ala., 368.

What can be more fanciful than the value of a race horse? How much of it is intrinsic?

Judge Blatchford, in *Muser* vs. *Holland* (*supra*), held squarely that the limitation as to value is binding.

2. This Court has decided, too, that it is not necessary that the rate fixed in the agreement should be a reduced rate. *Railroad Co.* vs. *Fraloff*, 100 U. S., 24. We were entitled, if the value of the horses was an unusual one, to charge an "additional compensation proportioned to the risk." (p. 27). The same view is taken by the Supreme Court of Michigan, Cooley, J., delivering the opinion in *McMillan* vs. *Railroad Co.* (16 Mich., 79; see p. 116).

3. In view of the above authorities, and of the reasons controlling the decisions, we conclude that:

(*a*) If the horses had a peculiar value as race horses, and their full value as such was not clearly made known to the contracting agent of defendant, it was a fraud, and plaintiff cannot now avail himself of it.

(*b*) The owner of the horses fixed their value, and is now estopped from denying it.

(*c*) As freight was paid upon the car at the rate charged for a car load worth $1,200, the plaintiff, if entitled to recover at all, can recover only that sum. No carrier would be willing to transport $40,000 worth of horse flesh twelve hundred miles for $47.

(*d*) The concealment of the fact that the real value of the property was greater than that named naturally induced less care on the part of the carrier than would have been exercised if the value now claimed had been made known, and therefore the owner conduced to the loss. It is reasonable to suppose that if defendant had known that it had $40,000 worth of horses in one car, it would have attached the car to a passenger train rather than run the risks incident to the movement of freight trains;

or would have run a special train consisting of an engine and that one car.

4. Hence the question of negligence does not enter into the discussion. And the cases which hold that the carrier cannot contract for exemption from the effects of his negligence, or that of his servants, have no application.

It is true that some Courts have held that a limitation as to value is of no effect if the loss was occasioned by the carrier's negligence. But this Court has never so decided. And in those cases where it has been so held, either the limitation was contained in a notice or receipt, and there was no evidence of express assent thereto by the shipper, or it was expressed to be strictly a limitation of the measure of damages, and not an agreed valuation; whereas, the contract in the case at bar is not a limitation of liability, but a fair and reasonable agreement between the parties as to what the actual value was.

Thus in *Moulton* vs. *Railway* (31 Minn., 85), one of the latest decisions on that side of the question, the words used in the bill of lading were: "in case of loss the damage should in no case exceed $100 per head, etc." And the Court held that the carrier was liable for the full value, if the loss occurred through negligence. But the principle contended for by us is nevertheless conceded. "Yet there is no reason," says the learned judge, "why the contracting parties may not in good faith agree upon the value of the property presented for transportation, or fairly liquidate the damages recoverable in accordance with the supposed value. Such an agreement would not be an abrogation of the requirements of the law, but only the application of the law as it is by the parties themselves to the circumstances of the particular case." (p. 89).

Again: "We do not question the right of a carrier to require the disclosure by the consignor of the value of the property presented for transportation, where its value is not apparent and well known. This is reasonable, both to the end that proper care may be taken of the property while it is in the hands of the carrier, and because the proper charges for transportation may often depend largely upon value." (p. 90.)

II. Under the contract the burden of proof of negligence was on the plaintiff; and we submit that he has failed to show that the accident was the result of negligence.

N. J. Steam Nav. Co. vs. *Merchants' Bank*, 6 How., 384.
Clark vs. *Railway Co.*, 64 Mo., 440.
Louisville, &c. Railroad Co. vs. *Hedger*, 9 Bush, 645.
Sager vs. *Railroad Co.*, 31 Me., 228, 239.
Lamb vs. *Railroad Co.*, 46 N. Y., 271, 279.
Farnham vs. *Railroad Co.*, 55 Pa. St., 53.
Patterson vs. *Clyde*, 67 id., 500.

The mere parting of coupling pins and the subsequent events detailed by plaintiff's witness, would not warrant the jury in inferring negligence on the part of defendant's employees.

French vs. *Railroad Co.*, 41 N. Y. (4 Keyes), 108.
Bankard vs. *Railroad Co.*, 34 Md., 197.
Adams Exp. Co. vs. *Sharpless*, 77 Pa. St., 516.

As it is well said by the Supreme Court of Missouri, "it is obvious that injuries may occur consistently with the exercise not only of reasonable care and skill, but of the highest degree of diligence."

Holman vs. *Railroad Co.*, 62 Mo., 562.
Maher vs. *Railroad Co.*, 64 id., 267.

And this Court says, in *Railroad Company* vs. *Lockwood;* "It was just and reasonable that they should not be responsible for losses happening by sheer accident." (p. 380; see also p. 381.)

III. If the charge is excepted to as a whole, and any one of the propositions contained in it be correct, the exception must be overruled.

Johnston vs. *Jones*, 1 Black, 209.

The charge in question contained several propositions of law; and only one is complained of here.

IV. It follows from the above considerations that there was no error in the action of the Court below, and the judgment of that Court should be affirmed. But we feel justified in saying that not only was the verdict for $1,200, all that plaintiff could ask, but it was more than he was entitled to under the evidence. The court below might properly have instructed the jury to find a verdict for the defendant.

One of the provisions of the contract signed by plaintiff in error, and which he introduced in evidence, reads as follows: "When necessary for said stock to be transported over the line or lines of any other carrier or carriers to the point of destination, delivery of the said stock may be made to such other carrier or carriers for transportation upon such terms and conditions as the carrier may be willing to accept; provided, that the terms and conditions of this bill of lading shall inure to such carrier or carriers, unless they shall otherwise stipulate; but in no event shall one carrier be liable for the negligence of another." (Record, fol. 64; Printed Record, p. 26.)

The evidence introduced by plaintiff in the court below shows that the place where the accident occurred was on the line of a carrier other than defendant, and

that if it were caused by negligence, it was a negligence for which plaintiff had agreed that defendant should not be liable. (Record, fol. 22, 51; Printed Record, pp. 10, 21.)

There can be no question that a stipulation limiting a carrier's liability to his own line is valid. The common law imposed no liability on a carrier beyond the terminus of his line; hence such a stipulation is not a limitation of the carrier's common law liability. It was so held by the Supreme Court of Pennsylvania (Strong, J., delivering the opinion), in the case of this defendant against Schwarzenberger (45 Pa. St., 208), as well as in the following cases:

Insurance Co. vs. *Railroad Co.*, 104 U. S., 146.
E. T. V. & G. R. R. Co. vs. *Brumley*, 63 Tenn., (5 Lea.), 401.
Railroad Co. vs. *Bank of Milwaukee*, 20 Wisc., 122.
Tardos vs. *Railroad Co.*, 35 La. Ann., 15.
Doolan vs. *Midland Railway Co.*, I.R., 10 Law, 47.

In the case last cited this principle was conceded by all the members of the Court, and was expressly stated in the opinions of Deasey B. (p. 65), and of Palles, C. B. (p. 76).

Two cases are cited by Lawson, in his work on carrier's contracts, as holding the contrary. But in one of them the goods were still in the first carrier's custody when destroyed (*Condict* vs. *Railroad Co.*, 54 N. Y., 500); and in the other (*Railroad Co.* vs. *Pontius*, 19 Oh. St., 221), stress seems to have been put upon the fact that there was a contract to carry through. The reasons given for the conclusion reached in that case are far from satisfactory. But, admitting its authority, it has no application to the case at bar; for we did not undertake to carry the goods to destination, as our contract expressly pro-

vides that the transportation beyond the terminus of our line should be performed by other carriers.

It follows that, at the time the injury was sustained, defendant had fully performed its duty, and was in no sense liable for the loss. The Court below might properly have directed a verdict in defendant's favor. It is true defendant cannot now complain of this. But surely plaintiff will not be granted a new trial, when it appears that he already has more than he is entitled to. What is said by the Supreme Court of Missouri in a case involving a similar principle to this, is apposite here.

Randle vs. *Railroad Co.*, 65 Mo., 325, 334.

V. Nor does the statement in the charge of the Court below, that it was admitted by defendant's counsel that plaintiff was entitled to recover a verdict for $1 200, preclude an affirmance of the judgment. For

(a) It will be seen by an inspection of the Record that the Court inadvertently went further than the admission actually made. The Record shows (fol. 74; Printed Record, p. 30), that "it was admitted by the defendant that the damages sustained by the plaintiff were equal to the full amount expressed in the bill of lading." But there was no admission of any liability whatever.

(b) As we have shown above, even if defendant did admit a liability when none actually existed, the judgment should not be reversed on that ground.

We respectfully ask an affirmance of the judgment.

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112-331

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In the Supreme Court of the United States.

Lawrence Hart

vs.

Pennsylvania Railroad Company.

No. 79.

SUPPLEMENTAL BRIEF BY DEFENDANT IN ERROR.

Counsel for plaintiff in error lay much stress in their brief upon that part of plaintiff's own testimony relating to the circumstances under which the contract was signed, and the knowledge on the part of a certain clerk that the animals were race-horses. This testimony the court below properly disregarded. For,

1. No such issue was raised by the pleadings. The pleadings were made up in the State court before the case was removed to the Federal court. They are, therefore, to be interpreted in accordance with the Missouri statute. The Code of Practice of Missouri provides that where the answer contains new matter, the plaintiff shall reply thereto, denying generally or specifically the allegations controverted by him, and may allege any new matter, not inconsistent with the petition, constituting a defense to the new matter in the answer. (Rev. Stat. of Mo., 1879, § 3524.)

The fact of knowledge on the part of defendant of the value of the horses does not affect the validity of the contract. There is no pretense that the contract is a void one. The utmost effect that can be claimed is that the limitation would not apply in case of a loss arising from negligence. But this is a substantive defense to the contract, and should have been specifically pleaded.

This general denial merely controverts the affirmative averments of the answer. These averments were that the horses were shipped under a special contract executed under the hand and seal of plaintiff; that two of the provisions contained in this contract were the following: (*a.*) That defendant in error should not be responsible for the negligence of any other carrier; (*b.*) That the carload of horses was worth $1200; and it was further alleged that the injury, if any, occurred while the horses were in custody of another carrier. These allegations plaintiff in error simply denied. The words of the replication are, "denies each and every material affirmative averment thereof"—of defendant's answer. No new matter in avoidance of the contract was alleged.

Thus the only issues were: (*a.*) Did plaintiff execute the contract? A question of fact, which he himself established by putting in evidence the contract; (*b.*) What did the contract mean? a question of law for the court. The court construed the writing, and the only question here is as to the correctness of its construction thereof.

As to the remaining point, whether the accident occurred while the property was in the custody of a carrier other than defendant, that too is conclusively shown by the testimony offered by plaintiff.

2. The testimony in question was inadmissible by reason of the further fact that the conversations all took place anterior to the signing of the contract, and cannot be received to contradict its terms.

3. A careful examination of the testimony will show, too, that it does not tend to prove what plaintiff claims it does.

Plaintiff admits that he knew he was signing a contract (folio 68; printed record, page 28). And there is nothing that gives countenance to any pretense that he was forced to sign it, or wheedled or defrauded into signing it.

The conversation with the clerk in which he spoke of Clemmy G. occurred, it seems, two years prior to the shipment in question, the horses having been shipped in October, 1879, and this conversation with the clerk having occurred in 1877 (folio 73; printed record, page 30). Besides, even if it be conceded that this clerk knew the animals were race-horses, it does not follow that he knew their value, nor that he did not suppose $1200 to be a reasonable value for them. We venture the assertion that even experts would be very wide apart in their estimate of the actual value of race-horses. In the Kansas case, cited by plaintiff in error, the jury found the value of a race-horse to be only $250—just about the value fixed in our contract (*Railway Co.* vs. *Simpson*, 30 Kan., 645).

The fact remains that plaintiff in error advisedly, and without a word of dissent, executed this contract. If the reasons advanced by his counsel are such as to warrant a repudiation of it by him, it would be difficult to say what would give sanctity to a contract. Suppose this cause of action were reversed, and the defendant in error were suing to recover a larger compensation on the ground that the horses were worth thirty times the value stated in the contract. No one would be more prompt to insist upon the obligation of this contract than plaintiff. We only ask the same measure of justice for the defendant.

Respectfully,

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